



*Approved
SAWA
14/10/25*

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION (2025)

PUBLIC INVESTMENTS COMMITTEE

ON

COMMERCIAL AFFAIRS AND ENERGY

THIRD REPORT


OF

THE PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS & ENERGY

ON EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE

FINANCIAL STATEMENTS OF SELECTED STATE CORPORATIONS

(ROADS AND TRANSPORT SECTOR)

	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 14 OCT 2025	DAY: Tuesday
TABLED BY:	Hon. David P. Kering MP Chairman

DIRECTORATE OF AUDIT, APPROPRIATIONS & GENERAL PURPOSE COMMITTEES

THE NATIONAL ASSEMBLY

PARLIAMENT BUILDINGS

NAIROBI

NATIONAL ASSEMBLY
RECEIVED
14 OCT 2025
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI

October, 2025

TABLE OF CONTENTS

LIST OF ABBREVIATIONS AND ACRONYMS.....	iv
CHAIRPERSON'S FOREWORD	vi
EXECUTIVE SUMMARY	viii
1.0. PREFACE	ix
1.1. Establishment and Mandate of the Committee.....	ix
1.2 Committee Membership	xi
1.3. Committee Secretariat	xii
1.4. Committee Proceedings	xiii
2.0. GENERAL OBSERVATIONS AND RECOMMENDATIONS	0
3.0 CONSIDERATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED FINANCIAL STATEMENTS OF STATE CORPORATIONS.....	3
3.1 KENYA URBAN ROADS AUTHORITY	3
FINANCIAL YEAR 2020/2021	3
FINANCIAL YEAR 2021/2022	14
3.2 KENYA RURAL ROADS AUTHORITY (KeRRA).....	57
FINANCIAL YEAR 2020/2021	57
FINANCIAL YEAR 2021/2022	63
3.3 LAPSSET CORRIDOR DEVELOPMENT AUTHORITY	83
FINANCIAL YEAR 2018/2019	83
FINANCIAL YEAR 2019/2020	85
FINANCIAL YEAR 2020/21.....	89
FINANCIAL YEAR 2021/22.....	94
3.4 KENYA PORTS AUTHORITY (KPA).....	96
FINANCIAL YEAR 2019/20.....	96
FINANCIAL YEAR 2020/2021	192
3.5 THE KENYA CIVIL AVIATION AUTHORITY (KCAA).....	245
FINANCIAL YEAR 2018/19.....	245
FINANCIAL YEAR 2019/20.....	271
FINANCIAL YEAR 2020/21.....	295
FINANCIAL YEAR 2021/22.....	321
3.6 KENYA NATIONAL HIGHWAYS AUTHORITY	359
THE FINANCIAL YEAR 2020/2021	359
FINANCIAL YEAR 2021/2022	371

3.7 NAIROBI METROPOLITAN AREA TRANSPORT AUTHORITY(NaMATA).....	408
FINANCIAL YEAR 2019/2020	408
THE FINANCIAL YEAR 2020/2021	410
FINANCIAL YEAR 2021/2022	411
FINANCIAL YEAR 2022/2023	423

LIST OF ABBREVIATIONS AND ACRONYMS

CEO	-	Chief Executive Officer
CS	-	Cabinet Secretary
DCI	-	Directorate of Criminal Investigations
EACC	-	Ethics and Anti-Corruption Commission
FY	-	Financial Year
GoK	-	Government of Kenya
IAS	-	International Accounting Standards
IFRS	-	International Financial Reporting Standards
IPSAS	-	International Public Sector Accounting Standards
Kes/ Kshs.	-	Kenya Shillings
OAG	-	Office of the Auditor General
PFMA	-	Public Finance Management Act, No. 18 of 2012
PPAD	-	Public Procurement and Asset Disposal Act, No. 33 of 2015
PS	-	Principal Secretary
PSASB	-	Public Sector Accounting Standards Board
KURA	-	Kenya Urban Roads Authority
NAMATA	-	Nairobi Metropolitan Authority
CoK 2010	-	Constitution of Kenya, 2010
KeRRA	-	Kenya Rural Roads Authority
LCDA	-	Lapsset Corridor Development Authority
KPA	-	Kenya Ports Authority
KCAA	-	Kenya Civil Aviation Authority
AGOL	-	African Gas and Oil Company Limited
KRB	-	Kenya Roads Board
KPLC	-	Kenya Power and Lightning Company
LAPSSET	-	Lamu Port-South Sudan – Ethiopia Transport Corridor
KWS	-	Kenya Wildlife Service

KAA	-	Kenya Aviation Authority
NLC	-	National Land Commission
KRA	-	Kenya Revenue Authority
SRA	-	Salaries and Remuneration Commission
NOCK	-	National Oil Corporation of Kenya
DC	-	Defined Contribution
DB	-	Defined Benefits
SCAC	-	State Corporations Advisory Committee
KFS	-	Kenya Forest Service
NYS	-	National Youth Service
PAP	-	Project Affected Persons
PBC	-	Performance Based Contracting
CBA	-	Collective Bargaining Agreement

CHAIRPERSON'S FOREWORD

The Public Investments Committee on Commercial Affairs & Energy (hereinafter referred to as "the Committee" is one of the six 'Watchdog Committees' in the thirteenth Parliament that examine reports of the Auditor-General laid before the National Assembly to ensure probity, efficiency and effectiveness in the use of public funds. The Committee is established pursuant to National Assembly Standing Order 206A to examine the working of public investments based on their audited reports and accounts. This ensures implementation of *Article 229(8)* of the Constitution of Kenya, 2010, on reports laid before the House by the Auditor-General. The Committee was hived off the hitherto singular Public Investments Committee, alongside two others, for the efficiency of examination of audit reports.

In examining the accounts of the Auditor General, the Committee invited Accounting Officers in each of the state corporations under review to adduce evidence before it.

This report contains observations, findings and recommendations arising from examination of reports of the Auditor-General for seven (7) State Corporations for three financial years running up to the latest, FY 2021/2022. The report is structured as follows:

- i) general observations arising from recurring and cross-cutting audit queries;
- ii) recommendations to each of the above;
- iii) audit queries identified by the Auditor General in the audit reports of each state corporation;
- iv) Management Responses to each of the queries;
- v) Committee Observation on each query; and
- vi) recommendations of the Committee to each query raised.

In this report, the Committee makes policy recommendations that it deems will cure financial and audit challenges, and at the same time recommends specific actions against specific officers who may have acted contrary to the law. It further recommends further investigations of certain matters by the relevant investigative agencies, such as the EACC and the DCI. All this is geared towards ensuring prudent use of public resources and holding all persons that have misappropriated public funds accountable, in accordance with *Article 226 (5)* of the Constitution.

The Committee appreciates the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to it to enable it to perform its mandate. The Committee further extends its appreciation to the Office of the Auditor-General for the services it offered to the Committee during the entire period, as well as those Accounting Officers who complied with audit timelines and provided satisfactory responses to queries raised.

I also extend my appreciation to my fellow Members of the Committee and the secretariat, whose immense contributions and dedication to duty has enabled the Committee to examine the audit queries and produce this report.

On behalf of the Public Investments Committee on Commercial Affairs & Energy, and pursuant to National Assembly Standing Order 199(6), it is my pleasant duty and honour to present to the House the 3rd Report of the Public Investments Committee on Commercial Affairs & Energy on the audited Financial Statements for seven (7) State Corporations.



HON. DAVID LOSIAKOU PKOSING, CBS, MP

**CHAIRPERSON, PUBLIC INVESTMENTS COMMITTEE ON COMMERCIAL AFFAIRS &
ENERGY**

EXECUTIVE SUMMARY

The 3rd report of the Public Investments Committee on Commercial Affairs & Energy (PIC-C&E) contains the Committee's examination of audited financial statements of seven (7) State Corporations.

In its examination and scrutiny of the audited financial statements of the various State Corporations, the Committee's primary approach was to elicit background information as to why particular course of financial and/or management actions were or were not taken. This was done with the relevant public financial management principles in mind, including, the Constitution of Kenya, 2010, the Public Audit Act, 2015, the Public Finance Management Act, 2012, and the attendant regulations, Public Procurement & Asset Disposal Act, 2015 and the attendant regulations, the International Public Sector Accounting Standards (IPSAS) and International Financial Reporting Standards (IFRS) relevant for commercial state corporations.

The preface of the report contains preliminaries on the establishment of the Committee; its membership and secretariat; mandate, and the guiding principles governing the Committee while undertaking its mandate.

Part two of this report contains the committee's general observations/findings on cross-cutting issues and their recommendations.

Part three of this report contains reports of the specific state corporations whose financial statements were examined; the financial years considered in each state corporation; the specific audit reservations raised by the Auditor General in each financial year; *Management Response* to each audit reservation raised by the Auditor General; *Committee Observation* after considering each audit reservation; and finally, *Committee Recommendations* on each audit query.

1.0. PREFACE

1.1. Establishment and Mandate of the Committee

1. The Public Investments Committee on Commercial Affairs & Energy is established under the National Assembly Standing Order (S.O.) 206A and is responsible for the examination of the working of public investments based on their audited reports and accounts in the sectors of energy, environment, general economic and commercial affairs. It is mandated to-
 - i. Examine the reports and accounts of the public investments.
 - ii. Examine the reports, if any, of the Auditor General on the public investments; and
 - iii. Examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.
2. The Committee, in considering the Audited accounts of state corporations, is guided by the Constitution of Kenya and the following statutes and codes/regulations in carrying out its mandate: -

a) Chapter Twelve of the Constitution on Public Finance

Part I-Principles of Public Finance

Article 201 sets out the principles of public finance, which include: -

- (i) openness and accountability, including public participation in financial matters (**Article 201(a)**); use of public money prudently and responsibly (**Article 201(d)**); and
- (ii) responsible financial management and clear fiscal reporting (**Article 201(e)**).

Part 6-Control of Public Money

Article 226 deals with the accounts and audit of public entities and provides that:

- (i) the accounting officer of a national public entity is accountable to the National Assembly for its financial management (**Article 226(2)**); and
- (ii) the holder of a public office, including a political office, who directs or approves the use of public funds contrary to law or instructions, is personally liable for any loss arising from that use and shall make

good the loss, whether the person remains the holder of the office or not (Article **226(5)**).

Article 227 deals with the procurement of public goods and services. Article 227 (1) in particular, provides that "when a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive, and cost-effective".
the Public Finance Management Act, No. 18 of 2012

Section 68 sets out the responsibilities of accounting officers for national government entities, Parliament and the Judiciary. This includes accountability to the National Assembly for ensuring that the resources of the respective entity for which he or she is the accounting officer are used in a lawful, authorized, effective, efficient, economical and transparent manner (section 68(1)).

Section 72 focuses on the accounting officers' responsibility to manage the assets and liabilities of national government entities.

3. Apart from the above-named laws, the Committee was further guided by the following: -

- i. The Parliamentary Powers and Privileges Act, No. 29 of 2017;
- ii. The Public Finance Management (National Government) Regulations, 2015;
- iii. The Public Procurement and Asset Disposal Act, No. 33 of 2015;
- iv. The Public Procurement and Asset Disposal Regulations, 2020;
- v. the State Corporations Act, No. 11 of 1986;
- vi. The Public Audit Act, No. 34 of 2015;
- vii. The Fair Administrative Action Act, No. 4 of 2015;
- viii. The Accountants Act, No. 15 of 2008; and
- ix. The National Assembly Standing Orders

1.2 Committee Membership

4. The Committee comprises of the following fifteen (15) Members;

	Name of Member	Constituency	Party
1	Hon. David Pkosing, CBS, MP - Chairperson	Pokot South	KUP
2	Hon. Dr. John Ariko Namoit, MP - Vice Chairperson	Turkana South	ODM
3	Hon. Dr. Adan Wehliye Keynan, CBS, MP	Eldas	Jubilee
4	Hon. Mwangi Kiunjuri, EGH, MP	Laikipia East	TSP
5	Hon. Sarah Paulata Korere, MP	Laikipia North	Jubilee
6	Hon. Babu Owino Paul Ongili, MP	Embakasi East	ODM
7	Hon. Dr. Beatrice Kahai Adagala, MP	Vihiga (CWR)	ANC
8	Hon. Esther Muthoni Passaris, MP	Nairobi (CWR)	ODM
9	Hon. Paul Kahindi Katana, MP	Kaloleni	ODM
10	Hon. Betty Njeri Maina, MP	Muranga (CWR)	UDA
11	Hon. Charo Kazungu Tungule, MP	Ganze	PAA
12	Hon. David Kiplagat, MP	Soy	UDA
13	Hon. Duncan Mathenge Maina, MP	Nyeri Town	UDA
14	Hon. Ronald Kamwiko Karauri, MP	Kasarani	Independent
15	Hon. Yusuf Mohamed Farah, MP	Wajir West	ODM

1.3. Committee Secretariat

5. The Secretariat facilitating the Committee comprises the following technical staff: -

- | | | | |
|-------|----------------------|---|---|
| i. | Ms. Wanjiru Mwaura | - | Principal Clerk Assistant/ Team Leader |
| ii. | Mr. Andrew Kipchumba | - | Clerk Assistant III |
| iii. | Ms. Isabella Mwembi | - | Clerk Assistant III |
| iv. | Ms. Angela Musau | - | Legal Counsel II |
| v. | Mr. Brian Njeru | - | Fiscal Analyst II |
| vi. | Mr. Amos Tindi | - | Hansard Reporter II |
| vii. | Ms. Roselyne Ndegi | - | Senior Sergeant at Arms |
| viii. | Ms. Deborah Mupusi | - | Media Relations Officer II |
| ix. | Mr. Timothy Chiko | - | Research Officer III |
| x. | Ms. Mercylyn Kerubo | - | Audio Officer |
| xi. | Ms. Lily Cherotich | - | Protocol Officer |

1.4. Committee Proceedings

6. To produce this report, the Committee held twenty-seven (27) sittings in which it comprehensively examined the reports of the Auditor General on the financial statements of seven (7) State Corporations for various financial years.
7. In its inquiry into whether the affairs of the public investments are managed in accordance with sound business principles and prudent commercial practices, the Committee heard and received both oral and written evidence from Chief Executive Officers, Managing Directors and Director Generals (Accounting Officers) of various State Corporations and other relevant witnesses.
8. The Committee Observations and recommendations on the issues raised by the Auditor General for the various State Corporations are found under appropriate sections of the report for each of the State Corporations covered.
9. These Committee observations and recommendations, if considered and implemented, will improve accountability, effectiveness, transparency, efficiency, prudent management, commercial viability and value for money in State Corporations and the public investments across sectors such as energy, environment, general economic and commercial affairs.

2.0. GENERAL OBSERVATIONS AND RECOMMENDATIONS

10. In consideration of reports of various state agencies, the Committee encountered cross-cutting and at times recurring matters that make general observations and recommendations. Specific observations and recommendations are, however, made under each specific agency. In summary, the following are the general cross cutting issues observed affecting most agencies that were examined by the Committee: -

a. Poor Accounting Standards and General Incapacity of Some Accounting Officers

11. The Committee observed that, due to a laxity on the part of some Accounting Officers, some queries relating to accounting standards that ought to have been resolved during the audit process end up being subjected and culminating in Parliamentary scrutiny. In addition, some accounting officers were generally - non-compliant to various provisions of the Public Finance Management Act, Cap 412A, Public Audit Act, Cap 412B and the Regulations therein.
12. Audit queries spanning from the Financial Year 2018/19 remained unresponded to by some agencies, who were only triggered to action once invited by the Committee. This therefore affected the Committee's timelines in examining the audit queries as some of the submissions presented before the Committee were either insufficient or lacked concrete supporting evidence thereby necessitating the Committee to postpone examinations to allow the agencies to prepare effectively.
13. In view of the above, the Committee recommends that the accounting officers of the National Treasury, Inspectorate of State Corporations and the Office of the Auditor General to conduct annual sensitization and capacity building exercises to all accounting officers and finance staff in state corporations on matters relating to financial reporting including their responsibilities during the audit cycle and adherence to IPSAS.

b. Unsecured/ Untitled Land Holdings

14. The Committee also observed that there were cases where land held by various institutions lacked title documents. This has resulted to encroachment in some cases and land dispute cases that pose a potential risk of loss of land. The Committee recommends that the accounting officers of the National Lands Commission and the Ministry of Lands, Housing and Urban Development to

immediately ensure that all State Corporations secure titles to all their parcels of land pursuant to National Treasury Circular No. 5 of 2024 on acquisition of Title Deeds for public institutions. The agencies and the National Treasury must also prioritize fencing off all land holdings to forestall further encroachment. Further, the Committee recommends that the accounting officer of EACC to undertake proper investigations on encroached lands and ensure that encroachers face full extent of the law, and are evicted and charged in court.

c. *Incomplete Projects Due to Late Disbursement of Funds*

15. The Committee observed that several road projects had stalled, and some contractors had abandoned the sites due to huge pending bills. Further, as a result of the pending bills, the projects cost have escalated due to increase in interest and penalties, thereby exposing the government to huge financial liabilities.
16. Further, the stalled projects have denied the citizens the social economic benefits that were expected to be derived from the road infrastructure investment.
17. The Committee recommends that the accounting officers of the agencies, in collaboration with the parent ministry and the National Treasury to prioritize the release of funds and completion of the stalled projects.

d. *Failure to Avail Documents on Time*

18. The Committee observed that there was a laxity by agencies to avail documents to the Auditor general for verification as required under section 68 (2) (k) of the Public Finance Management Act, Cap 412A. This has resulted into audit queries escalating to Parliamentary scrutiny whereas they would have been resolved at the time of audit.
19. On the other hand, some Accounting Officers appear before the Committee without adequate supporting documents to support the submissions, thereby delaying the process of examination.
20. The Committee recommends that Accounting Officers should henceforth adhere to section 68 (2) (k) of the Public Finance Management Act, Cap 412A.

e. *Unproperly Constituted Boards of Management.*

21. The Committee observed that although it was not the responsibility of the Accounting Officers to appoint members of the Boards, the agencies have continued operating with Boards that are not properly constituted in line with the State Corporations Act, Cap 446 and the Mwongozo Code of Corporate

Governance. This has hampered their operations and promoted weak oversight in the management of the affairs of the agencies.

22. The Committee recommends that the Accounting Officers should proactively notify the parent Ministries on the status of the membership of the Boards and the appointing Authorities to ensure that the vacancies are filled without undue delay.

Summary of the Audit Queries

Institution/Agency	Financial Years	No. of Audit Queries	Resolved	Unresolved
Kenya Urban Roads Authority (KURA)	2020/2021, 2021/2022	42	12	30
Kenya Rural Roads Authority (KeRRA)	2020/2021, 2021/2022	28	19	9
LAPSSET Corridor Development Authority (LCDA)	2018/2019, 2019/2020, 2020/2021, 2021/2022	19	16	3
Kenya Ports Authority (KPA)	2019/2020, 2020/2021	69	53	16
Kenya Civil Aviation Authority (KCAA)	2018/2019, 2019/2020, 2020/2021, 2021/2022	31	13	18
Kenya National Highways Authority (KeNHA)	2020/2021, 2021/2022	40	19	21
Nairobi Metropolitan Area Transport Authority (NaMATA)	2019/2020, 2020/2021, 2021/2022, 2022/2022	19	8	11
TOTAL		248	140	108

3.0 CONSIDERATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED FINANCIAL STATEMENTS OF STATE CORPORATIONS

3.1 KENYA URBAN ROADS AUTHORITY

EXAMINATION OF THE AUDITED ACCOUNTS OF KENYA URBAN ROADS AUTHORITY FOR THE FY 2020/2021 AND FY 2021/2022

23. The management of the Kenya Urban Roads Authority, led by the Director General, Eng. Silas Kinoti appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2020/21 and FY 2021/22.

FINANCIAL YEARS 2020/2021 AND 2021/2022

24. The Committee was informed that in the three financial years under review, KURA received qualified opinions and raised the following audit issues:

FINANCIAL YEAR 2020/2021

The Auditor General gave an opinion raising the following concerns:

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1. Inadequacies In Implementation of Road Project

1.1 Dagoretti Corner-Karen Roundabout Road Project

25. The contract for dualing of Dagoretti corner- Karen Roundabout Road project was awarded to an international contractor at a contract sum of Kshs. 1,987,981,992, which was varied to Kshs. 2,382,337,514. Major works included dualing of 11 km of sections of Langata and Ngong Roads, construction of road over rail bridge, construction of five (5) footbridges, construction of 2-metre-wide cycle tracks and 2.5-metre-wide walkways on either side of the road, strengthening of the existing carriageway, drainage works and road furniture, among other works.

26. Review of records indicated that the contractor implemented approximately 70% of the construction works and submitted a proposal for assignment of the remaining works to a local contractor at an amount of Kshs. 751,108,491. The assignment contract was signed on 26th March, 2021.

27. Physical verification of the project in February 2022 revealed that barriers that were to be erected at the Jamhuri Park section, as per the contract, had not been placed, and the pedestrian walkways on the opposite side of the Ngong Horse Racecourse entrance were not constructed. Further, the works at the carriageway

section between the southern By-pass and Karen Shopping Centre and the section of Langata road loop were not complete despite the opening of the roads for public use, and road signs of the carriageway were missing, thus posing risks to road users.

28. In addition, the contract provided for five (5) footbridges, but none had been erected, and drainage works had not been completed. The contractor had suspended works due to outstanding payments of Kshs. 300,000,000.

Management Response

The Accounting officer submitted that—

29. It was true that the project implementation had been slow, mainly due to delayed payment to the contractor for certified Works.
30. Major road works and drainage works, including road marking and road signs, have since been completed. However, the construction of three (3) foot bridges commenced and are currently in progress. For the remaining two (2) foot bridges and barriers, the contractor is still on site and plans are underway to commence works once payment for the outstanding is made.
31. Further, walkway construction was prioritized on sections with high pedestrian flow, with the remaining sections planned to be completed as soon as the pending bill is settled. The project has an outstanding pending bill of Kshs. 272,125,309.80. For the contract period, the Contractor was granted an Extension of Time.

Current Physical Progress: 95%

Current Pending Bill: KES 272,125,309.80

Committee Observation

32. The Committee observed from the explanation of the Accounting Officer at the time of examination that, the progress of the project was at a 95% completion rate, and this was confirmed by the OAG.

Committee Recommendation

33. The Committee recommends that, within three (3) months upon adoption of this report, the Accounting Officer should ensure that the project is completed in time and submit a progress report to the OAG.

1.2. Nairobi – Outering Road Improvement Project.

34. The contract for the Nairobi Outer Ring Road Improvement project was awarded to a contractor at revised contract sum of Kshs. 8,263,399,494 for an extended contract period ending 25th April 2020 with two years defects liability period.
35. Physical verification of the project carried out on 23rd February 2022 revealed that the designated pedestrian footbridge at the main junction of Outering Road & Thika Road lacked barriers and a lighting system. Further, the Tassia Road section had open drainages clogged with garbage and overgrown vegetation despite the fact that a firm had been contracted to regularly maintain drains along the road.

Management Response

The Accounting Officer submitted that—

36. The barriers were not part of the scope of the initial contract. However, as part of the improvement of the safe use of the footbridges, barriers have been considered and are being installed through the ongoing maintenance contract.
37. The streetlights were installed but were vandalized. The Authority has since reinstated, and the PBC Contractor is continuously monitoring to forestall any further vandalism.
38. Routine maintenance of the roads is a continuous exercise, and the Authority has continuously engaged a Performance Based (PBC) routine Maintenance Contractor. PBC includes cleaning of the drains and clearing of vegetation. However, solid waste management is a challenge along the Outer Ring Road given its location. Further, the Authority has been engaging with the Nairobi City County Government to address Solid waste management on the Roads.
39. The Authority has since developed a close supervision mechanism to ensure the Contractor is clearing the road regularly.

Construction Works: 100%

Committee Observations

40. The Committee observed from the explanation of the Accounting Officer at the time of examination that the erection of pillars and the construction of the footbridges were complete, and the hand over certificate provided. Further, the Committee noted that the management had adopted performance-based

contracting for maintenance and were liaising with Nairobi County to manage waste collection and repairs.

41. The Committee observed that, since the erection of pillars and the construction of the foot bridges are complete, the matter is resolved.

1.3. Mother Kevin – Nakuru Town Road Project

42. The construction contract for improvement to the Bitumen Standard contract of Mother Kevin – Nakuru Town Road was awarded on 20th July, 2020, at a contract sum of Kshs. 49,526,695, and the order to commence work was dated 27th August 2020. The contract period was twelve (12) months and the expected completion date was 25th September, 2021. The works included a 0.5 km length of single carriageway with walkways situated in Kaptembwa in Nakuru town and upgrading to bitumen standards of the Posta link road. Review of the Project Implementation file revealed that the contractor was issued with notice for liquidated damages due to slow progress in September 2021, when the time elapsed was 92% against the physical progress of 60%. At the time of audit inspection on 28th February 2022, the surface preparation of the road was complete, awaiting bituminous works and drain lining. However, there was minimal activity going on at the site and the contractor was behind schedule by 5 months. The progress report provided for February 2022 indicated that the value works certified was Kshs. 22,239,443 or 45% while the percentage of the time elapsed was 141%.

Management Response

43. The management stated that the slow progress in the implementation of the project was due to delayed payments compounded by the COVID-19 pandemic. However, the Contractor was granted additional time for project completion. The road has since been completed and opened to traffic.

Current Physical Progress: 100%

Committee Observation

44. The Committee observed from the explanation of the Accounting Officer at the time of examination that, the project was complete, and the taking over certificate was availed to the OAG for verification; hence the matter is resolved.

1.4. Transactions Nakuru Chief's Office – Ndaragua Road Project.

45. The contract for improvement to the bitumen Standard of Nakuru Chiefs office – Ndaragua Road Project was initially awarded to a contractor on 22nd July 2020 at a contract sum of Kshs. 38,224,685 with a commencement date of 26th September 2020. The contract period was twelve (12) months, and the expected completion date was 25th September 2021. The major contract works included new construction of 0.6 km road to bitumen standard, reinstatement of damaged drains and installation of culverts. The contract stalled and the remaining works was assigned to a new contractor in September 2021. At a sum of Kshs. 27,710,660. At the time of assignment of works, the value of works carried out was 7,969,397, although the amount had not been certified. It was further noted that the Interim Payment Certificate (IPC) had not been raised by the first contractor. Physical verification carried out on 28th February 2022 revealed that the contractor who was assigned the remaining works was not on site. Some earthworks carried out had left galleys on the surface marking the road impassable. The monthly progress report of February 2022 indicated that the project implementation time elapsed was 142% while physical progress was 15%.

Management Response

The Accounting officer submitted as follows—

46. It is true that Management had to effect provisions in the Contract to remedy against poor performance of the Contractor awarded the Contract (FSI Capital Ltd). Consequently, the Contract was assigned to M/s Dynacorp Logistics Ltd. who had substantially completed the adjacent project of Mother Kelvin Road. However, upon assigning, the Assignee ran into financial challenges due to delayed payments for the other project (Mother Kelvin Road) for more than a year, mainly because of delays in exchequer releases. In October 2023, the Assignee requested for termination citing delay in payments for works executed on Mother Kevin Road and changes in prices of construction materials. Following the request, the Authority initiated and completed the termination process.
47. The remaining Works will be procured afresh.

Current Status: Terminated

Committee Observations

48. The Committee observed from the explanation of the Accounting Officer at the time of examination that the contract was terminated and the Agency had not re-advertised the project.

Committee Recommendations

49. The Committee directs the accounting officer to fast-track the process of re-advertising the project.
50. Further, the Committee recommends that within three (3) months of adoption of this report, the Accounting Officer should submit a status report on the progress of this project to the OAG for verification.

Kipangawau – Kibowen Primary Access/ Mwariki Secondary School – Pembe Mbili Eldoret Road Project.

51. The contract of the improvement to the Bitumen standard of Kipangawau – Kibowen Primary Access /Mwariki Secondary School – Pembe Mbili Eldoret Road Project was awarded to a local contractor at a contract sum of Kshs. 481,072,074 on 4th May 2021 for a Contract period of eighteen (18) months. The order to commence was issued on 14th June 2021, with the expected completion date of 14th January 2023. Review of the Project's monthly Report for November 2021 revealed that the estimated physical was 14% while the time elapsed was 26%. The contractor was behind the Schedule. It was noted that a total of Kshs. 26,726,226 had been paid as part of the payment of the advance payment requested by the contractor as per the contract agreement. During Physical verification exercised carried out on 28th February 2022 the contractor was not on site and there were sections with cut out top soil and dug out drainage leaving galleys on the surface.

Management Response

The Accounting officer submitted as follows—

52. The Contractor commenced works well in June 2021. However, there was need for relocation of services i.e. power lines, sewer and water from the corridor which took time and hence the observed delays. Further, the project experienced funding challenges due to inadequate budget allocations and delays in the exchequer releases. This led to stoppage of Works. However, the contractor has since resumed site made good progress despite continuing delay in exchequer

releases. The project is currently at 74% even though a total of Kshs 84,733,715.21 is yet to be paid.

Current Physical Progress: 74%

Current Pending Bill: Ksh. 84,733,715.21

Committee Observations

53. The Committee observed from the explanation of the Accounting Officer at the time of examination that there was progress on the project, which was at 74% during examination compared to 26% during the time of audit.

Committee Recommendation

54. The Committee recommends that, within three (3) months of the adoption of this report, the Accounting Officer submit a status report on the progress of this project to the OAG for verification.

1.5. Eldoret Township Roads Contract

55. The contract for improvement to Bitumen standards of Eldoret Townships Roads was awarded to a local contractor at a contract sum of Kshs. 1,156,540,838 for a contract period of forty- four (44) months. The works commenced on 5th may 2017 with expected revised completion date of 30th December 2020. Review of taking over certificate and minutes of completion dated 27th January 2021 indicated that the project was substantially complete and outstanding works were; installation of road signs, road marking and guard rails on Rivatex -Kipkaren, Kapsoiya-Munyaka-Hawaii- Kiplombe roads while stone pitching and unpaved walkways works were outstanding on Kapsoya-Munyaka-Hawaii & Hawaii – Kiplombe roads.

56. Physical verification exercise carried out on 7th March 2022, revealed that the outstanding works had not been completed despite the project being handed over to the authority. Further it was noted that as at 28th September 2020 total works certified on Interim Payment Certificate (IPC) NO. 5 was Kshs. 850,591,599 which included interest on late payment of Kshs. 2,197,895.

Management Response

The Accounting Officer submitted that—

57. As at the time of the Audit, the outstanding works were as noted during the audit. The works were not fully completed because of a delay in payments. The Contractor subsequently completed the Works. However, the Contractor is yet to be paid Ksh. 70,152,391.65, which continues to attract interest. Management is pursuing this to get it addressed at both the Ministry and The National Treasury level to facilitate a conclusion of this Contract.

Current Physical Progress: Completed

Current Pending Bill: Ksh. 70,152,391.65

Committee Observation

58. The Committee observed during the examination that the project was complete, and a handover certificate had been provided; hence, the matter stands resolved.

1.6. Garissa Township Roads Contract

59. The contract of Upgrading to bitumen standards and performance based routine maintenance of Garissa Township Roads was awarded to a local contractor at a contract sum of Kshs. 483,366,251. The commencement date was 11th November 2016 and the expected completion date was 11th November 2018. The performance based routine maintenance cost was agreed at Kshs. 36,581,760 which was included in the contract sum. The project works included six (6) access roads within Garissa Township of approximately 7.3 km in length. The overall physical progress as at the end of February 2022 was 42% while the time elapsed for initial completion date stood at more than 39 months. The physical verification exercise carried out in March 2022 revealed slow progress in project implementation

Management Response

The Accounting Officer submitted that—

60. The works were procured through KeRRA and vested to KURA. It was then appraised to reflect requirements for urban roads as opposed to rural roads design. There was delay in the process of vesting and actual commencement of the works. The project was completed and taken over in December 2023 on end of defects liability period. However, there is still pending bills of Kshs. 316,947,212.52.

Current Physical Progress: Completed
Current Pending Bill: Kshs. 316,947,212.52.

Committee Observation

61. The Committee observed from the explanation of the Accounting Officer at the time of examination that, the project was complete and handover the certificate provided, hence the matter is resolved.

1.7. Upgrading of Maua Town Roads

62. The contract for the Upgrading of Maua Town Roads was awarded at a sum of Kshs. 1,021,885,939, and the expected completion date was 19th May 2019. It also included a maintenance contract at a cost of Kshs. 28,720,440. Review of records revealed that the contractor was unable to complete the work, which resulted in the work being assigned to three (3) contractors. During physical verification on 10th March 2022, it was observed that the first assigned contractor had completed part of the upgrading of the 1.5 km road.

63. The second assigned contractor was on the site continuing with the works with only 0.75km of the road not started. The third assigned contractor was not on site. It was noted that the percentage of time elapsed for the third contractor was 92% against the physical progress of 70% raising doubts on whether the contractor will meet the contractual obligation.

Management Response

The Accounting Officer submitted as follows—

64. The first assignee completed the assigned 1.5Km within the allocated time and the section was taken over. The second assignee completed the assigned 6.75Km within the allocated time.

65. However, the third assignee for 6.75Km completed 3Km and was unable to proceed due to delayed payment and changes in prices of construction materials. The contractor notified the Authority that due to upwards movement of prices, he could not continue with the Works and requested for termination of the contract which was completed.

66. The remaining Works will be packaged and procured afresh.

Current Physical Progress: 11.25Km complete out of 15kms (75%)
Current Status: Terminated

Committee Observations

67. The Committee observed from the explanation of the Accounting Officer at the time of examination that the works were partially complete and a balance of 3.7km had not been done.
68. Further, the Committee observed that there were no works going on, and the contract with the third assignee was terminated.

Committee Recommendations

69. The Committee recommends that the Accounting Officer fast-track the process of re-advertising the remaining works.
70. Further, the Committee recommends that within three (3) months of adoption of this report, the Accounting Officer submit a status report on the progress of this project to the OAG.

1.8. Jomvu Kuu – Jitoni – Rabai Road.

71. The contract for construction to Bitumen standards of Jomvu Kuu – Jitoni- Rabai Road Project was awarded on 10th July 2017 at a contract sum of Kshs. 1,023,765,470 with original contract completion date being 13th September 2019 which was later revised to 25th April 2021. The roads work was to cover approximately 11.7 km in length. During physical verification exercise in March 2022 it was observed that the project was behind the schedule and works were still in progress. It was also noted that seven (7) out of nine (9) programmed milestones had been completed. Approximately 11 months had elapsed from the revised project completion date of 25th April 2021.
72. In the circumstances, the value for money and service delivery to the public could not be confirmed.

Management Response

The management submitted that:

73. It is true that the works were behind schedule at the time of audit mainly because of delayed payment of certified works. However, the contractor managed to complete 80% of the project length which have since been taken over and the road is open to traffic.
74. The Contractor stopped working and has not been able to resume and complete the remaining works due to financial constraints caused by delay in payment. The Contractor is yet to be paid KShs 86,244,111.27. The Authority is awaiting the

release of the exchequer funds so as to pay the Contractor in order to resume works on site.

Current Physical Status: 80%

Current Pending Bills: Kshs. 86,244,111.27

Committee Observation

75. The Committee observed from the explanation of the Accounting Officer at the time of examination that the project was 80% done and a taking over certificate ref. no. KURA/MS/FM/037 provided. However, there remained 20% of unfinished works.

Committee Recommendation

76. The Committee recommends that, within three (3) months of adoption of this report the Accounting Officer to submit a status report on the progress of this project to the OAG for verification.

2.0. Interest on Late Payments

77. Review of records indicated that there were claims on interest for late payment to contractors totaling Kshs. 55,246,678 for various projects undertaken by the Authority which had accrued as at 30th June 2021. Interest on delayed payments represents an extra to public funds beyond the projects' estimated costs.

78. In the circumstances, the value for money paid as interest on delayed payments could not be confirmed to be effective management of public funds.

79. The audit was conducted in accordance with ISSAI 4000. The standard requires that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements are in compliance, in all material aspects, with authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide basis for my conclusion.

80. In the circumstances, the value for money paid as interest on delayed payments could not be confirmed to be effective management of public funds.

81. The audit was conducted in accordance with ISSAI 4000. The standard requires that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements are in compliance, in all material aspects,

with authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide basis for my conclusion.

Management Response

82. The management stated that Interest on delayed payments accrues as a result of late payments to the contractor and is governed by the contract provisions. This is necessitated by the late disbursement of funds by the National Treasury. All claims relating to interest on delayed payments go through the approved procedures before they are paid. To this extent, the management can confirm that there were no irregular accruals of costs relating to interest.
83. Engagement with the Ministry of Roads and Transport and the National Treasury are ongoing to secure additional Budget to clear pending bills.

Committee Observation

84. The Committee observed from the explanation of the Accounting Officer at the time of examination that, the Agency had accrued a total of Kshs. 375 Million on interest on late payments. The Agency was liaising with the National Treasury to disburse the funds and provide for additional funding.

Committee Recommendation

85. The Committee directs the Accounting Officer of KURA to ensure that all future financial commitments strictly align with approved budgets and procurement plans. Further, within three (3) months of adoption of this report, the Accounting Officer to submit a status report on the pending bills, detailing the efforts being undertaken by management to settle them, to the Office of the Auditor-General for verification.
86. The Committee recommends that within three (3) months of adoption of this report, the Accounting Officer of KURA to submit a comprehensive report to the National Assembly on the securitization of the Road maintenance Levy Fund (RMLF) and the progress it has made in tackling stalled road projects and the pending bills.

FINANCIAL YEAR 2021/2022

The Auditor General gave a qualified audit opinion, raising the following concerns

3.0. Road Rehabilitation and Maintenance Costs

87. The statement of financial performance and as disclosed in Note 15 to the financial statements reflects road maintenance and rehabilitation costs amounting to Kshs. 6,799,078,191. The following unsatisfactory matters were noted.

3.1. Lack of Payee Details

88. Review of the supporting ledgers/schedules showed some payments whose payee details were not shown as detailed below;

The Accounting Officer submitted that—

89. The KRA covered the period before December 2016 and the reported VAT and Withholding Tax related to the tax status for the FY 2019-2020. The Authority has since paid all its tax liabilities and updated the records which resulted to the issuance of a Tax Compliance Certificate.

Item	Amount (Kshs.)
Consultancy	10,867,205
Road Safety and Children Traffic Parks	9,185,806
Traffic Census and Forward Planning	1,032,442
Axle Load Control Costs	2,694,799
Road Reserves Mapping and Control Costs	5,279,908
Design Inhouse	4,925,956
Special Programs and Environmental Awareness	10,655,621
Total	44,641,737

90. In the circumstances, accuracy of the expenditure totaling to Kshs. 44,641,737 could not be confirmed.

Management Response

91. The management stated that it concurs with the auditors' observation on missing Payee details on the schedules. The Initial schedules provided were from the ERP system, which had a challenge of showing the payee details on the general ledger accounts. However, the payment vouchers provided to the auditors had clear details of the respective payees. Revised schedules with payee details were subsequently shared with the auditors and matter closed.

Committee Observation

92. The Committee observed that at the time of examination, the management submitted a revised ledger that contained all the payee details amounting to Kshs.44, 641,737, therefore, the matter stands resolved.

4.0. Unreconciled Road Maintenance Levy Fund (RMLF)

93. The statement of financial position and as disclosed in Note 17(b) to the financial statements reflects receivables from non-exchange transactions balance of Kshs. 5,533,727,695. Included in the balance is RMLF grants receivable balance of Kshs. 5,077,624,094 from Kenya Roads Board. However, the audited financial statements of Kenya Roads Board Fund reflect RMLF disbursement payable to Kenya Urban Roads Authority balance of Kshs. 2,322,321,695 resulting to a variance of Kshs. 2,755,302,399 which was not explained or reconciled. In the circumstances, the completeness and accuracy of grants receivable amounting to Kshs. 5,077,624,094 could not be confirmed.

Management Response

94. The Management stated that it was true that the financial statements reflected a balance receivable from non-exchange transactions of Kshs.5,533,727,695. This related to RMLF grant receivable from Kenya Roads Board for FY 2021/2022. Grant receivable is accrued based on the records available to the Authority and is accounted for in line with IPSAS 8 on Revenue Recognition.

95. According to the records, grant receivable from Kenya Roads Board amounted to Kshs.5,077,624,094 as reported in the financial statements for the year ended 30th June 2022.

96. The above amounts were subsequently received at the beginning of the F/Y 2022-2023 and were correctly recorded as per the above accounting standard on the dates indicated below. Attached please find the bank statements indicating the dates when the funds were received.

<i>Date</i>	<i>Amount</i>
<i>5th July 2022</i>	<i>1,025,834,012.00</i>
<i>8th July 2022</i>	<i>1,133,678,923.00</i>
<i>15th July 2022</i>	<i>2,918,111,159.00</i>
<i>Total</i>	<i>5,077,624,094.00</i>

Committee Observation

97. The Committee directs the OAG to carry out a forensic audit on the revenue generated by the KRB from the fuel levy for the Financial Years 2020/2021 to 2022/2023. Further, the forensic audit should confirm the amount that Kenya Revenue Authority collected and disbursed to the KRB and the amount KRB disbursed to the agencies in relation to fuel levy for the stated period.

5.0. Receivables From Exchange Transactions

98. The statement of financial position and as disclosed in Note 17(a) to the financial statements, reflects receivables from exchange transactions balance of Kshs. 4,153,600,796 in respect of contractors' advances as at 30 June, 2022. Age analysis of receivables from exchange transactions revealed that the amount of Kshs. 4,153,600,796 has been outstanding for more than one year, an indication that no recoveries have been made against the advances. Management has not provided justification for non-recovery of part of the advances. In the circumstances, the accuracy of contractors' advances amounting to Kshs. 4,153,600,796 could not be confirmed.

99. The contract advances movement for the year is tabulated below:

Financial Year	FY 2022-2023	FY 2021-2022
Balance as at 1st July 2021	4,153,600,797	1,620,828,564
Advanced during the year	1,081,840,178	3,023,950,043
Recoveries during the year	(2,829,435,518)	(491,177,810)
Balance as at 30 June 2022	2,406,005,457	4,153,600,797

Management Response

100. The Management stated that It was true that the financial statement reflects receivables from exchange transactions balance of Kshs 4,153,600,796 in respect of contractors advances as at 30 June, 2022.

101. Contract advances are issued to contractors for mobilization and are recoverable within the contract period in accordance with the contract terms.

Contract advances are secured by bank guarantees from approved commercial banks in Kenya.

102. In FY 2021/ 2022, the Authority had a contract advance opening balance of Kshs. 1,620,828,564 and paid contract advances amounting to Kshs. 3,023,950,043 during the financial year. Further, there was a recovery of the contract advances during the year amounted to 491,177,810, therefore leaving an outstanding balance of Kshs. 4,153,600,797 as reported in the financial statement for the year ended 30 June 2022.
103. In the subsequent financial year 2022/2023, there was a reduction in the contract advances balance to Kshs. 2,406,005,457 as reported in the financial statements. This was made up of the opening balance of Kshs. 4,153,600,797, additional payment of advances amounting to Kshs. 1,081,840,178 and recovery of Kshs. 2,829,435,518.
104. Most of the contract advances are already recovered as they are part of the pending bills for projects under implementation and whose settlement will enable recovery of the contract advances in the ERP.

Committee Observation

105. The Committee observed from the submission by the Accounting Officer at the time of examination that the recoveries were ongoing. The receivables from exchange transactions were related to the advances granted to the contractors and were secured by bank guarantees.

Committee Recommendation

106. The Committee recommends that within three (3) months upon the adoption of this report, the Accounting Officer should expedite the pending recoveries of Kshs. 2,406,005,457 and submit a status report.

6.0. Failure To Recognize Road Assets

107. The statement of financial position and as disclosed in Note 20 to the financial statements, reflects the Infrastructure Work-in Progress balance of Kshs. 133,072,963,945. The Infrastructure Work-in Progress balance has accumulated over the years and no capitalization has been made to roads assets. In the absence of justification for continued accumulation of Infrastructural Work-in Progress, the accuracy and presentation of the financial statements could not be confirmed.

Management Response

The Accounting Officer submitted that—

108. It is true that the financial statements showed a balance of Infrastructure Work-in Progress balance of Kshs.133,072,963,945.
109. Road assets have been classified as part of property plant and Equipment under non-current assets as Infrastructure Work In progress in accordance with IPSAS 17. However, there is no amortization of this particular asset due to lack of appropriate policy on the same.
110. The National Treasury has since issued guidelines on accounting treatment for infrastructure assets. Further International Public Sector Accounting Standards Board (IPSASB) has since issued IPSAS 45 giving clarity on accounting for the infrastructure assets. The revised standard takes effect from January 2025.
111. The Authority is committed to complying with both the National treasury guidelines and the pronouncements issued by the IPSASB on effective dates.
112. The current disclosure under the Noncurrent assets is therefore appropriate and in line with International Public Sector Accounting Standards No 17.
113. Further, the Authority is in communication with the National Treasury for technical assistance on the matter.

Committee Observation

114. The Committee observed at the time of examination that the management of KURA was liaising with the National Treasury to guide them in developing policy guidelines for the treatment of roads infrastructure in their books of accounts.

Committee Recommendations

115. The Committee recommends that within six (6) months of the adoption of this report, the Accounting Officer of KURA should submit an update to the OAG on the progress made in the development of the policy guidelines on the treatment of roads infrastructure in the books of accounts.

EMPHASIS OF MATTER

7.0 Pending Bills

116. The statement of financial position and as disclosed in Note 22(a) to the financial statements, reflects a balance of Kshs. 15,356,572,639 in respect of payables from exchange transactions, which comprised of current payables

amounting to Kshs. 14,180,564,783 and non-current payables amounting to Kshs. 1,176,007,856. The balance includes an amount of Kshs. 14,146,847,283 dues to suppliers and contractors. The total balance as at 30 June, 2022 when compared to the amount of Kshs. 12,278,076,796 reflected in the financial statement for the year ended 30 June, 2021, results to an increase of Kshs. 3,078,495,843 or 25% and exposed the Authority to unnecessary and avoidable costs of claims of interest and penalties on late payments to contractors on various projects. In the circumstances, the increase in pending bills may affect the cash flow of the Authority and adversely affect its operations.

Management Response

The Accounting Officer submitted the following—

117. Payables arise from the normal business of the Authority. As normal accounting practice, the balance at the end of the year is a result of the movement comprising of opening balance, expenditure and payments during the year. The Authority has engaged the National Treasury for Budget enhancement to settle pending bills.

Committee Observations

118. The Committee observed from the explanation of the Accounting Officer at the time of examination that, the Agency had accrued huge amounts in pending bills. Further, the Agency was liaising with the National Treasury to disburse the funds and provide for additional funding to settle the pending bills.

Committee Recommendations

119. The Committee recommends that within three (3) months of adoption of this report, the Accounting Officer of KURA to submit a comprehensive report to the National Assembly on the intended securitization of the Road Maintenance Levy Fund (RMLF) and the progress it has made in tackling the pending bills.
120. Further, the Accounting Officer to review its budget and prioritize settling the pending bills on the ongoing projects in future budget cycles.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

8.0. Failure To Implement Projects

121. Review of the road contracts and records on projects implementation under Road Maintenance Levy Fund revealed that road maintenance projects totaling to Kshs. 91,074,153 in the Annual Public Roads Programme (APRP) for the year ended 30 June, 2022 were not implemented, even though the budget for the roads was approved and funded as detailed below. Management has not provided reasons for non-implementation of the projects.

Projects in the APRP but not implemented	
Periodic	Amount (Kshs.)
Bibirioni- Ngarariga- Kamirithu	7,901,563.00
C505/Kiriaini Rd - Muranga Mortuary - Children Department Loop Roads (Vidhu Pry Roads)	12,937,720.00
Kamakwa - Nyeri to Blue Valley	15,212,152.00
Beevers Hotel - Meeting Point Phase II	12,108,109.00
Routine	
Lacquinta Hotel to Flamingo Bar - Tiema (C.B.D)	7,064,150.00
Muregeti-Kinyogori - Limuru Town	7,118,940.00
C544-St Mary Bus Stage - Muranga-High to Law Court. (Muranga High - Bus Stage)	12,081,900.00
Masaku - Wataalam	6,752,472.00
Broadway - CBD (General Kago Rd - Mku - A3), P 3	9,897,147.00
Total	91,074,153.00

In the circumstances, the Authority did not comply with the approved APRP for the year.

Management Response

122. The management stated that the Authority received a request from the Ministry to revise the work plan for 2020/2021 to incorporate additional roads in the Approved 2020/2021 Annual Public Roads Programme (APRP) with a total budget of Ksh 95,057,200.00 tabulated below.

Road Name	Amount
-----------	--------

Access to Kigumo CDF hall road/offkigumu/Kanyari Road	20,469,785.00
Access to Kigumo MTC/Hospital	46,225,669.00
Access to DCC's office	28,361,746.00
Total	95,057,200.00

123. The APRP for 2020/2021 was already under implementation and could not be revised. However, the roads not implemented in the APRP for 2020/2021 were subsequently planned and implemented in the subsequent financial years as tabulated below.

S/No.	Road Name	FY IMPLEMENTED
1	Rurigi Estate – Tigoni Rd_1 –Bibironi – Ngarariga- Kamirithu	2022 – 2023
2	Law courts - Vidhu pry - Mortuary, Access To Murang'a University Road	2022-2023
3	Kamakwa-Nyeri-Slaughter House Roads Nyeri Municipality Nyeri County	2022-2023
4	Beevers Hotel - Meetingpoint Loop Roads	2022 – 2023
5	Lacquinta –Bus Stage CBD Roads	2022 – 2023
6	Mugereti - Kinyogori-Limuru Town	2023 – 2024
7	Muranga - Bus Stage/Muranga - Kigoro	2023 – 2024
8	Broadways -CBD (General Kago) Kiganjo	2023 – 2024

Committee Observation

124. The Committee observed from the submission of the Accounting Officer that, the revision of works was due to change of work plan midyear and the budgeted Kshs. 91 Million was reallocated to other road projects. However, the initial planned road works were done in the subsequent financial year.

Committee Recommendation

125. The Committee directs that within three (3) months upon adoption of this report, the Accounting Officer to submit the progress report of the deferred eight (8) projects under the Annual Public Roads Programme (APRP) to the OAG.

Implementation of Road Works Projects

9.1 Dualing of Ngong Road (Dagoretti Corner - Karen Roundabout)

126. The contract was initially awarded at an original contract sum of Kshs. 1,987,981,993 on 12 May, 2017 which was later revised to Kshs. 2,382,337,515 after a variation order of Kshs. 394,355,522. However, the contractor on 17 February, 2021 submitted a proposal for assignment of works to a local company at an assigned amount of Kshs. 751,108,491. The agreement for assignment of part of the contract between the two (2) contractors and the Government of Kenya represented by Kenya Urban Roads Authority (KURA) was signed on 26 March, 2021.
127. The total length of the section is approximately 9.8km (Dagoretti Corner to Karen Roundabout: 6.2 km, Karen Road section 1.9 km; Langat Road section:1.7km.) The main project consists but not limited to new construction to bitumen standards, rehabilitation to bitumen standards of the existing carriageway, construction of 1 No.22.5m long reinforced concrete road over rail bridge, construction of 5 No. reinforced concrete footbridges and construction of drainage structures.
128. The assignment agreement was that the employer (KURA) shall pay the assignee the agreed assignment price of Kshs.751,108,491. That the Assignee shall prepare for submission, interim payment certificates for the completed milestones(s) or sections and the employer shall pay the money (net value of the IPC Less 5%) to the assignee Bank. The 5% of the net value of the IPC shall be due to the original or main contractor to cover overheads incurred by the main contractor in management of the contract. These shall be paid directly to the account of the main contractor.
129. The project's progress report dated November, 2022 indicated that the roadworks were at 90% completion (excluding footbridges) with amount certified of Kshs.2,074,651,038 and a revised completion date of 30 March, 2022. Therefore, the contract duration had expired and Management did not provide evidence

of further extension of the contract. The outstanding payment on certified works was Kshs.333,629,164. The report also noted slow progress by the contractor, unpaid pending bills and encroachment by informal operators as the main challenges to completion of the project.

130. Audit inspection exercise carried out on 15 February, 2023 revealed that the contractor was not on site. The pedestrian walkways on the opposite side of Ngong Racecourse entrance (Ngando area) were not constructed as per design and the section has been encroached by small scale traders with their wares and thereby disrupting free flow of pedestrians. In addition, the works on the carriageway were not complete and the surface was uneven. Further, drainage works were not completed and this poses danger to road users especially during the rainy season.
131. The contract provides for five (5) footbridges but this had not been done thus exposing pedestrians to risk of accidents given that Ngong road is a heavy traffic road. In the circumstances, delay in the completion of the road works has adversely impacted service delivery to the public and full value for money on road project could not be confirmed.

Management Response

The management submitted as follows;

132. It is true that the project implementation has been slow mainly due to delayed payment to the contractor for certified Works.
133. Major road works and drainage works including road marking and road signs have since been completed. However, the construction of three (3) foot bridges commenced and are currently in progress. For the remaining two (2) foot bridges and walkways, the contractor is still on site and plans are underway to commence works once payment for certified Works is made.
134. The Authority has and continues to engage the City County of Nairobi on the relocation of the informal traders along the proposed location of the walkways to pave way for the expected Works.
135. Further, walkway construction was prioritized on sections with high pedestrian flow with the remaining sections planned to be completed as soon as the pending bill is settled. The project has an outstanding pending bill of Kshs. 272,125,309.80. For the contract period, the Contractor was granted an Extension of Time for completion of the remaining Works.

Committee Observations

136. The Committee observed from the explanation of the Accounting Officer at the time of examination that the progress of the project was at 95% completion rate and this was confirmed by the OAG.

Committee Recommendations

137. The Committee recommends that, within three (3) months upon adoption of this report, the Accounting Officer should expedite the completion of the project and submit a report on the status of the project to the OAG.

9.2 Delayed Construction of Ngong Road Footbridges, Nairobi

138. The statement of financial performance reflected an expenditure of Kes. 47,452,021 in respect of remuneration of Directors during the year under review. However, the Cabinet Secretary appointed twelve (12) Directors including the Chief Executive Officer instead of ten (10) Directors as provided for under Section 31(e) of the Water Act, 2016, resulting to an excess of two (2) Directors. This resulted in unnecessary extra costs on remuneration to the Directors. Further, the Audit and Risk Committee did not have any Director with expertise in auditing, financial management or accounting experience and knowledge in risk management and membership of professional body in good standing, as required under the Mwongozo Code of Governance for State Corporations. The Board was therefore, not properly constituted. The construction of Ngong Road Foot Bridges project was awarded at a cost of Kshs. 190,558,366.10. The project is located along Ngong Road and it consists of construction of three footbridges located as outlined below;

- (i) Gate B of Kenyatta National Hospital (KNH)
- (ii) Coptic Hospital
- (iii) Kenya Science Campus

139. The contract was signed on 24 September 2020, while possession of site was granted on 7 October 2020. The estimated completion date was given as 2 May, 2022. As at the time of the audit inspection in February 2023, the physical progress report was indicated at 31%. Total amount certified and paid was Kshs.40,379,780, with programmed certification of Kshs.21,576,502.53 pending payment, which totaled to Kshs. 61,956,283 or 32.5% of the contract sum. The contractor had

requested for extension of time and completion date, which was revised to May 2023.

140. The Nairobi Hospital management had raised concern that the designated location of the footbridge at Gate B of KNH did not have the approved consent from the Hospital through an Environmental Impact Assessment (EIA) involvement as required. The matter had also been referred to the National Environment Complain Committee. In the circumstances, it is unlikely that the project will be delivered within the expected timeline thus adversely impacting on realization of value for money by the public.

Management Response

141. The management stated that the National Environmental Complain Committee (NECC) said they had no objections to the construction of the footbridges since they were convinced that adequate public participation was undertaken. It was only that Nairobi Hospital did not attend the public participation meetings despite having been invited. Having resolved the Nairobi Hospital matter, the contractor was granted an extension of time to complete the remaining works. Despite the funding challenges, the contractor continued with the works and the current physical progress is 67%.

Committee Observation

142. The Committee observed from the submission of the Accounting Officer that there was progress on the project and with a projected completion date of November 2025.

Committee Recommendation

143. The Committee recommends that within three (3) months of the adoption of this report, the Accounting Officer should expedite the completion of the project and submit a report to the OAG on the status of the project for verification.

9.3 Nairobi Outering Road Improvement Project

144. The contract for Nairobi Outering Road Improvement project was awarded at a contract price of Kshs.8,263,399,494 and the contract ended in April 2020 with a two years defects liability period.
145. As previously reported, the project was on a maintenance contract but had challenges of open drainages that were used as receptacles of garbage/dumpsites. It was also noted that there were mounds of garbage by the

roadside on some sections. Audit inspection carried out on 15 February, 2023 noted improvement on the observations made in the previous year. However, the following issues were still outstanding;

- (i) Cleaning of closed drains was not done well and some drainage covers had been vandalized. The maintenance contractor on site needs to plan for occasional cleaning of the closed drains to avoid flooding especially during the rainy season.
- (ii) Dumping of garbage on various sections of the road was noted to be posing a challenge to the contractor.
- (iii) Pedestrians were crossing the road on undesignated sections whereas there are footbridges erected for crossing.

146. In the circumstances, there is a risk of flooding on the road and loss of pedestrians' lives.

147. In the circumstances, there is a risk of flooding on the road and loss of pedestrians' lives.

Management Response

148. The management stated that there is an ongoing PBC contract for the road and the works involved include cleaning of the drains, carriageway and minor repairs. The Authority has engaged and continues to engage the Environment Department of the City County of Nairobi to assist in solving the garbage dumping menace.

149. In the interim, the PBC Contractor is working on ensuring that the road is free of garbage at all times. To solve the issue of pedestrians crossing the road on undesignated sections, KURA through the PBC contractor is erecting a barrier fence along these sections.

150. This will guide the pedestrians to use the existing footbridges. The Authority is also considering erecting permanent barriers not prone to vandalism in the road median to deter pedestrian cross at undesignated locations and direct them to the foot bridges. This will be implemented once funds are available.

Committee Observation

151. The Committee observed from the explanation of the Accounting Officer at the time of examination that the erection of pillars and the construction of the footbridges were complete, and hand over certificate provided. Further, the Committee noted the management had adopted performance-based

contracting for maintenance and were liaising with Nairobi County to manage waste collection and repairs, hence the matter stands resolved.

9.4 Eastern By-Pass Road-Footbridge near Cabanas Area

152. The construction of the footbridge was carried out by the Authority through funding from the African Development Bank and completed for use to motorists several years back. The Authority had erected metal barriers along the road and in between the bars were light metal sheets to ensure that the pedestrians do not cross the road at un-designated areas but instead use the footbridge for their own safety.
153. Audit inspection carried out on 15 February, 2023, revealed that the barriers were either crashed by speeding vehicles or had been vandalized thus resulting to risk of loss of lives. This issue had been noted and reported in the previous year's audit with no intervention from the Management of the Authority. In the circumstances, there is a risk of loss of pedestrians' lives as there are no barriers to ensure safe usage of the footbridge.

Management Response

154. The management stated that vandalism of steel materials has been a challenge across the Country whose solution/intervention call for concerted efforts through multi sectoral approach.
155. The Authority has been repairing damaged road furniture and incorporated repair works in planned maintenance projects, however, the rate and frequency of vandalism of the infrastructure is not sustainable and calls for intervention at policy level and enforcement.
156. The Authority in collaboration with industry players and institutions of higher learning, is in process of researching for alternative road furniture materials to deter the practice.

Committee Observations

157. The Committee noted from the submission of the Accounting Officer that destruction of the barriers was caused by vandalism by illegal scrap metal dealers. The management are collaborating with Kenyatta University to develop alternative materials that do not attract vandals.

Committee Recommendations

158. The Committee recommends that the Accounting Officer to liaise with the Scrap Metal Council to develop a multi-agency approach aimed at protecting road infrastructure from vandalism and theft.
159. The Committee recommends that where possible the agency should consider opting to construct under-bridges as alternatives to footbridges to avert the challenge of vandalism.
160. The Committee further recommends that within three (3) months of the adoption of this report, the Accounting Officer of KURA submit a detailed report to Parliament, outlining the progress and outcomes of the collaboration. The report should also include updates on the progress made by Kenyatta University in the development of alternative materials for use in road infrastructure.

9.5 Improvement to Bitumen Standard of Nakuru Chief's Office - Ndaragua Road

161. The contract for the road project was initially awarded to a construction company on 22 July, 2020 at a contract sum of Kshs.38,224,685 and a commencement date of 26 September, 2020. The contract period was twelve (12) months with the expected completion date of 25 September, 2021. The contract stalled and the contractor entered into an assignment agreement, using the same contract rates, with another contractor in September, 2021 for a total assigned amount of Kshs.27,710,660.
162. to bitumen standards, reinstatement of damaged drains and installation of culverts. Audit inspection carried out on 28 February, 2023 revealed that, as previously reported, the project had stalled, the contractor had abandoned site and no work was going on. Management has not explained the circumstances under which the contractor abandoned the project and action that have been taken on the contractor for failing to implement the project as per the contract.
163. In the circumstances, the project may not be delivered as per the contract terms.

Management Response

The management submitted as follows:

164. It is true that Management had to effect provisions in the Contract to remedy against poor performance of the Contractor awarded the Contract (FSI Capital Ltd). Consequently, the Contract was assigned to M/s Dynacorp Logistics Ltd. who had substantially completed the adjacent project of Mother Kelvin Road.

However, upon assigning, the Assignee ran into financial challenges due to delayed payments for the other project (Mother Kelvin Road) for more than a year mainly because of delay in exchequer releases. In October, 2023, the Assignee requested for termination citing delay in payments for works executed on Mother Kevin Road and changes in prices of construction materials. Following the request, the Authority initiated and completed the termination process. The remaining Works will be procured afresh.

Committee Observation

165. The Committee observed from the explanation of the Accounting Officer at the time of examination that the contract was terminated and the Agency had not re-advertised the project.

Committee Recommendations

166. The Committee recommends that the Accounting Officer to fast-track the process of re-advertising the project.
167. Further, within three (3) months of the adoption of this Report, the Accounting Officer should submit a status report on the progress of this project to the OAG for verification.

9.6 Construction of Narok Town Roads - Narok

168. The contract was awarded to a construction company at a contract sum of Kshs. 680,415,106 on 29 April 2020 for a contract period of eighteen (18) months. The works commenced on 25 August 2020 with expected completion date of 25 February 2022. The project duration was later extended by 13 months to 20 March 2023. The project works comprised of improvement to the bitumen standards of junctions B3 Kims Breeze – PolOnga road, B3-Olmarei Lang' Road, ENSDA Africa Hope Centre Road, Maasai Mara University-GK Prisons Bridge and County Commissioner's Loop Road in Narok County. The roads covered a total of 7.7 km in length. The main works were the construction of a 7-meter single carriageway, 2m wide footpath on either side of the road, drainage structures including a twin box culvert and a river crossing reinforced concrete 40-meter, 2-span bridge, road furniture, safety provisions and street lighting.
169. As at the time of audit inspection on 5 March, 2023, the contractor had total works certified of Kshs. 338,191,933 or 50% of the contract value and the total pending bills/unpaid certified work was Kshs.92,982,638.
- (i) The following were noted during audit inspection of the project;

- (ii) Construction of Kims Breeze-Polongá road was almost complete. The pending section was at the box culvert section joining the Narok-Bomet road.
 - (iii) There was road encroachment on Olmarei-Lang Road Reserve which reduced the road corridor.
 - (iv) Only earthworks had been done on ENSDAAfrica Hope road.
 - (v) The contractor had only done some piles on the first and second abutment of the bridge.
170. In the circumstances, it was unlikely that the project would be completed by 20 March, 2023, given that the progress was at 50%.

Management Response

The management submitted as follows:

171. The Auditor's issues were noted and addressed as follows:
- (i) The Box culvert was completed.
 - (ii) The contractor was granted possession of site after encroachment issues were cleared. The works have progressed to black top.
 - (iii) The road is among the project Roads network, and earthworks are now complete and has commenced on base works.
172. The contractor was granted extension of time. Currently the progress is at 82% and most of the roads have been completed except the bridge which the contractor is about to embark on it by end of October so as to complete the works as per the contract.

Committee Observation

173. The Committee observed during the examination that the delay in project completion was primarily due to KURA's inability to make timely payments to the contractor. However, the Committee observed that there had been no cost variation from the original contract sum, and the project had progressed to 82% completion.

Committee Recommendation

174. The Committee directs that within three (3) months upon adoption of this report, the Accounting Officer to submit a status report on the progress of this project to the OAG for verification.

9.7 Construction of Homabay Town Roads Phase 1

175. The contract for the works was awarded to a local company at a contract sum of Kshs.630,973,302 on 4 May, 2021 for a contract period of thirty (30) months. The order to commence works was given on 14 June, 2021 with the expected completion date of 14 December, 2023. The main project works covered 7.11km long single carriageway, walkways and drainage works within Homabay town. The works comprised of upgrading to bitumen standards of Ruma – Stadium road, Ruma – Homabay High school, Ruma – Site, SDA – Waterworks road, KeRRA offices – Arunda School – Sophia road and Sophia – Nyagedha road.
176. A review of progress report for the month of January, 2023 revealed that assessed completed works was estimated at 8.6% against an elapsed time of 65.3%. The report also indicated that the amount of certified and paid works was Kshs.145,398,402 representing 23% of financial progress. The progress report also indicated that the project was likely to be extended by 203 days. The main challenges highlighted were presence of utility services on road corridor and inadequate mobilization by the contractor. At the time of audit inspection on 2 March, 2023, the contractor was doing earthworks, culvert installation and drainage works on some road sections.
177. In the circumstances, there is a likelihood that the project delivery will be delayed due to the slow progress of works by the contractor.

Management Response

178. The management stated that delayed payment to the contractor and relocation of services affected works progress. The contract mobilized all the require equipment and currently, the physical project stands at 41 %. Further, the Authority is working in close liaison with the County Government of Homabay and the service providers to overcome the challenges of relocation of services. In the meantime, the time for completion of the remaining Works has been revised to June, 2025.

Committee Observation

179. The Committee observed from the submission of the Accounting Officer at the time of examination that the Accounting Officer did not refute the fact that the project was lagging behind schedule and that it was unlikely that the project would be completed within the timelines stipulated in the contract.
180. Further, the Committee observed that there were obstacles on the road and other barriers hindering the construction.

Committee Recommendation

181. The Committee directs the Accounting Officer to liaise with the County Government of Homabay and KPLC to relocate the amenities, and within six (6) months of the adoption of this report, the accounting officer should submit a status report on the progress of this project to the OAG.

9.8 Improvement to Bitumen Standards of Eldoret Township Roads, Uasin Gishu County

182. The contract for the road project was awarded to a construction company at a contract sum of Kshs 1,156,540,838 for a contract period of forty-four (44) months. The works commenced on 5 May, 2017 with expected completion date of 30 December, 2020. The main project works were to cover 10.5 km upgrade to bitumen standards of Rivatex - Kipkaren road and Kapsoya - Munyaka - Hawaii - Kiplombe road.
183. A review of the taking over certificate and minutes of completion dated 27 January, 2021 showed that the project was substantially complete and outstanding works were as follows;
- i. Installations of road signs, road marking, installation of guard rails on Rivatex Kipkaren road.
 - ii. Installations of road signs, road marking, installation of guard rails, stone pitching and completion of unpaved walkways on Kapsoya- Munyaka-Hawaii road and Hawaii- Kiplombe road.
184. Audit inspection carried out on 1 March, 2023 revealed that the outstanding works had not been done and the contractor was not on site. The outstanding payments amounted to Kshs.403,711,576 and interest on late payment was Kshs.2,197,895, an indicator that the Authority had delayed making payments to the contractor. In the circumstances, the project delivery has delayed and therefore value for money has not been realized.

Management Response

185. The management stated that as at the time of Audit, the outstanding works were as noted. The works were not fully completed because of delay in payments. The contractor subsequently completed the Works. However, the Contractor is yet to be paid Kshs.70,152,391.65 million. Management is pursuing this to get it addressed at both the Ministry and The National Treasury level to facilitate a conclusion of this Contract.

Committee Observation

186. The Committee observed during the examination that the project was complete, and a handover certificate had been provided, therefore, the matter stands resolved.

9.9 Construction of Kisii Bypass Phase 2 - Kisii County

187. The contract for the road works was awarded to a local contractor at a contract sum of Kshs.846,921,029 and works commenced on 30 July, 2021, with a contract duration of 30 months and expected completion date of 14 December, 2023. The main project works comprised of construction of 15.58 km long single carriageway in Kisii town. The works included upgrading to bitumen standards of Itibo Market – Nyagesa junction road, Omogonchoro market – Riverbank junction, Botorio – Lesos – Kona Mbaya – La Premier and Access to Kisii University. Other works involved installation of road furniture, drainage and construction of two box culverts.

188. Review of the monthly progress report dated 17 January, 2023, revealed that the value of works certified by December, 2022 was Kshs.81,126,253 and that the assessed completed works were estimated at 9.24% against an elapsed time of 60%. During the audit inspection carried out on 2 March, 2023, the contractor was not on site and the works had been suspended.

189. In the circumstances, the project delivery may be delayed due to the slow progress of works and the citizens of Kisii County may not get value for money on this project.

Management Response

190. The management stated that the main contractor commenced the works and implemented approximately 9% of the works. The Contractor encountered financial challenges and nominated an assignee (Hudgens Construction Company Limited) to continue executing the works. The assignee has implemented 19% of the works. The total progress of works to date is 28%.The amount of money paid to the main contractor to date is kshs. 81, 095,008.95 while the assignee has been paid kshs. 58,464,995.19.

191. The assignee has presented a certificate amounting kshs.44,000,000, which is awaiting payment. The assignee has been unable to resume works due to financial challenges.
192. The Advance payment guarantee amounting kshs.84,692,110.00 is still valid. The Contract period has been extended to 30th Dec, 2025.
193. As at 31/03/2025, the Contractor had mobilized works and was currently at 28% progress.

Committee Observations

Section 1

194. The Committee observed at the time of examination that there was a construction site in place with recently assembled machines and no road works was ongoing.
195. The Committee noted that the preparation of the sub-base and clearing of the road had been done. However, obstacles i.e. electric poles and tree stumps were visible in some sections of the road.
196. The Committee was also informed that the last works on the road by the contractor was on 28th July, 2023. Additionally, the contractor informed the Committee that the remaining subway will be done by July 2025.

Section 2

197. The Committee noted that the Contractor had done the sublayer and road side clearance for half the road, but for the other half, no works had been done, raising concerns on the capacity of the contractor to carry out the road works.
198. The Committee was informed that the delays were occasioned by change of contractor who had not attempted to carry out any works on the road.
199. The Committee noted that the slow progress of the project was largely attributable to the contractor's limited capacity to execute the works.

Committee Recommendations

200. The Committee reprimands the Accounting Officer for laxity in the supervision of the project.
201. The Committee directs that within three (3) months, the Accounting Officer to submit a status report on the progress of this project to the OAG for verification.

9.10 Delayed Completion of Nyeri Town Roads

202. The contract for the road works was awarded to a local company in respect of upgrading to bitumen standards of Nyeri roads at a contract sum of Kshs.396,797,262 and the commencement date of 28 October, 2020 with expected completion date of 28 April, 2023. The road network under construction is a system of inter-linked roads, divided into three sections with total length of 5.4km. Audit inspection exercise carried out in February, 2023, revealed that the contractor was on site and works were going on. However, the project progress report as at January 2023 indicated that the project time elapsed was 90% against assessed work done of 40.9%. In the circumstances, it is unlikely that the project will be delivered within the expected completion date of 28 April, 2023 and the public may not get value for money on the project.

Management Response

203. The management stated that the progress has been hampered by the delay in settling of pending bills and exchequer release. The project completion date has been extended to April 2025.

Committee Observation

204. The Committee observed at the time of examination that the project was behind schedule due to the delay in settling of pending bills and exchequer release and that it was unlikely the project would be completed within the timelines stipulated in the contract.

Committee Recommendation

205. The Committee recommends that the Accounting Officer should prioritize completing the ongoing project before embarking on a new project.

206. The Committee recommends that, within three (3) months of the adoption of this report, the Accounting Officer should submit a status report on the progress of this project to the OAG.

9.11 Upgrading of Roads in Meru County Headquarters

207. The contract for the road works was awarded to a construction company at a contract sum of Kshs.1,043,328,635 and the commencement date was 27 July, 2020 with expected completion date of 27 July, 2022. Audit verification exercise

carried out in February, 2023 revealed that the contractor was not on site and no work was going on. Available information indicated that due to protracted delays in payments of certified interim payment certificates (IPCs) by the Authority, the contractor demobilized 70% of the labor force and some equipment thus significantly reducing the implementation capacity. It was further noted that the amount certified as at 28 February, 2023 was Kshs.298,457,824 against the amount paid of Kshs.164,403,685, thus leaving an unpaid balance of Kshs.134,054,139.

208. In addition, the contract period expired on 27 July, 2022 and the contractor had requested for extension of time which was pending approval by the Authority as at the time of audit. In the circumstances, the project is behind schedule and value for money may not be realized. Further, the project risk incurring additional costs in interest due to non-payment of certified works.

Management Response

209. The management stated that at the time of the Audit the contractor had suspended works due to huge pending bill and delayed exchequer release. Currently the pending bill for the project stands at Kshs 210,008,962.

210. The contract period was extended.

Committee Observation

211. The Committee observed that the project was behind schedule due to non-settlement of certified works and that it was unlikely that the project would be completed within the timelines stipulated in the contract.

Committee Recommendation

212. The Committee recommends that the accounting officer should prioritize completion of the ongoing project before embarking on a new project.

213. The Committee recommends that, within three (3) months of the adoption of this report, the accounting officer should submit a status report on the progress of this project to the OAG.

9.12 Upgrading of Maua Town Roads

214. The contract was awarded to a construction company at a contract sum of Kshs.993,165,499 with expected completion date of 19 May, 2019. It also included a maintenance contract at a cost of Kshs.28,720,440 resulting to a total contract sum of Kshs.1,021,885,939. Available information indicated that the contractor

was unable to complete the work, which resulted to the work being assigned to three (3) assignees.

215. As previously reported and also observed during the audit inspection exercise carried out on 28 February, 2023, one assigned contractor had completed their part of contract of upgrading 1.5 km road and vacated the site. The second assigned contractor was on site. A section of 1.5 km was substantially done with outstanding works being road marking and drainage works. However, a section of 0.75 km had not been done with material for sub base on site but not spread. The third assigned contractor was not on site and therefore no work was going on for the 0.7 km section of police station road and 0.8 km water intake roads as per the contract. Overall, the percentage of time elapsed was 100% against work done of 80% and therefore the two assignees may not meet their contractual obligation.
216. In the circumstances, the project is behind schedule and the public may not get value for money on the project.

Management Response

217. The management stated that the first assignee completed the assigned 1.5Km within the allocated time and the section was taken over. The second assignee completed the assigned 6.75Km within the allocated time.
218. However, the third assignee for 6.75Km completed 3Km and was unable to proceed due to delayed payment and changes in prices of construction materials. The contractor notified the Authority that due to upwards movement of prices, he could not continue with the Works and requested for termination of the contract which was completed. The remaining Works will be packaged and procured afresh.

Committee Observation

219. The Committee observed that the road was partially completed, with handover certificates in place. However, a 3km section remained abandoned after the contractor was unable to proceed with the works, leading to the termination of the contract.

Committee Recommendation

220. The Committee recommends that within six (6) months upon adoption of this report, the accounting officer should fast-track the re-advertisement of the

remaining works and submit a status report on the progress of this project to the OAG.

9.13 Construction of Access Roads to Maai Mahiu and Suswa SGR Stations

221. The contract was awarded to a local company at a contract sum Kshs.1,199,903,846 and with expected completion date of 2 June, 2024. The project is funded by GOK (Kenya Railways) and commenced on 2 December, 2021. The contractor has been paid advance payment of Kshs.119,990,385 and the amount certified as per IPC 1 was Kshs.62,281,558. The scope of works involves construction of 12km access road to Maai Mahiu SGR station and adjacent access roads and 3km access road to Suswa SGR station and adjacent access roads. The project components included 9.0m wide carriageway inclusive of a 2.0M cycle track and 2.0M walkway, storage lanes and bus bays, in-situ concrete and masonry lined u drains on both sides of the road, construction of box culverts as instructed by the engineer, road furniture, markings and identification and relocation of services.
222. Audit inspection carried out in February, 2023 revealed that construction of access road to Suswa SGR station was ongoing. Physical progress was at 10% as compared to time elapsed of 58%. The contractor attributed the slow progress to delayed payment of the advance payment and the IPC raised. Works on the access road to Maai Mahiu station had not started. Challenges observed were excessive erosion on access road to Maai Mahiu station due to the inherent nature of the loose volcanic soil and presence of Kenya Power and Lighting Company electric poles along the road reserve. Further, discussions were ongoing between the Authority and Kenya Pipeline Company Ltd on removal of the Company's property from the road reserve.
223. In the circumstances, there is a risk that the project will not be completed within the contract period thus impacting adversely on realization of value for money.

Management Response

224. The management stated that the delay in project progress was occasioned by the delays in releasing of funds from Railway development levy fund (RDLF). KRC have expressed their commitment to fast-track the processes to ensure future IPCs for certified works are processed in a timely manner.
225. Payments for certified works were honoured by Kenya Railways Corporation and the Contractor has undertaken to ensure that the works are completed within the revised contract period.

226. The Authority engaged with KPC and KP and the corridor was cleared paving way for the road construction. On loose volcanic soil, we ensured that extensive rockfill was used to arrest any situation on the loose volcanic soils.
227. The Works have since been fast-tracked and currently at 82% complete as at 31st March 2025. The Contract was extended to 26th May, 2025.

Committee Observation

Maai Mahiu

228. The Committee observed that the works had progressed and the access road was 82% complete. During the time of examination, the bitumen layer for the main road was nearly complete and awaiting the final layer. However, the walk paths, the cycling track and drainage construction works were ongoing with an estimated completion date of 26/05/2025.
229. The Committee noted that the project was at 82% completion, with the contractor having been paid approximately Kshs 800 million. Works on the access roads were progressing well. This represented a significant improvement, considering that at the time of the audit by the Office of the Auditor-General (OAG), the project was only at 10% completion.
230. The Committee observed that the neighboring residents in Maai Mahiu SGR station had been cut off from accessing the main road by a river. The Committee underscored the importance of constructing a bridge to facilitate accessibility of the main road by the local residents.

Suswa

231. The Committee noted that the construction of the access road to Suswa SGR was complete and open to the public for use. However, on the main road, the surface layer of bitumen had not been applied.

Committee Recommendations

232. The Committee recommends that within three (3) months of the adoption of this report, the Accounting Officer to submit a status report to the Office of the Auditor-General (OAG) on the progress of the projects, including the construction of the bridge intended to assist residents at the Maai Mahiu SGR station.

233. The Committee directs the Accounting Officer to source for funds and in liaison with Kenya Railway Corporation construct a bridge for the Community that has been cut off from accessing the main road at the Maai Mahiu SGR station.

9.14 Improvement of Nairobi Lot 2 - Upgrading of Shreeji Rd and Parts of Likoni and Enterprise Roads

234. The contract for the road works was awarded to a construction company at a contract sum of Kshs.892,661,116 on 8 September, 2020 for a contract duration of 24 months with expected completion date of 30 September, 2022. It also included a 36 months Performance Based Contract (PBC) on maintenance at a cost of Kshs.13,250,790. The scope of the contract included rehabilitation and upgrading of single carriageway of Shreeji road (1.1K.m) to two lanes two-way 7m, construction of walkways and drains, expansion of existing bridge over rail on Likoni road and river bridge on Enterprise Road, concrete drains on both sides, pipe culverts and other drainage works and road furniture. Audit inspection carried out in February, 2023 revealed the following anomalies;

- i. Likoni road bridge was incomplete despite time lapse.
- ii. Enterprise road bridge was incomplete. The contractor had not submitted design drawings for the proposed bridge structure.
- iii. A section of Shreeji road was incomplete. The contractor was doing earthworks as at the time of the audit.

235. In the circumstances, it is unlikely that the project will be completed by the revised completion date of 8 April, 2023, thus impacting adversely on realization of value for money.

Management Response

236. The management stated that the Likoni road bridge section is pending. Kenya Railways Corporation (KRC) insisted on a minimum clearance of 7.01m instead of the initially designed 5.6m (Same clearance as the existing Bridge).

237. KURA to improve the approaches to the existing Likoni Bridge while securing funds to demolish and construct new bridge meeting KRC requirements.

238. **Enterprise Road:** Works assigned to an Assignee in December 2024. Currently completed the bridge over Ngong River and ongoing with completion of pavement works.

239. **Shreeji Road:** Assignee to undertake completion of the pending 460metres once done with Enterprise Road.
240. The Assignee commenced works and the overall progress is at 84.64%.

Committee Observations

241. **Enterprise Road Bridge:** The Committee observed that the bridge over Ngong River is complete but road works for dualling the pending section was ongoing.
242. **Shreeji Road:** - The Committee observed that the road earth works were ongoing and the project was scheduled to be completed in June 2025. However, concerns were raised on the slow progress of works of the project.
243. **Likoni Road Bridge:**
- (i) The Committee noted that the bridge expansion had not commenced and given the contestation between KURA and KRC on the height of the bridge, there was no likelihood of completion of the bridge expansion and this was inconveniencing the public.
 - (ii) The Committee observed there was need for KURA to complete the road approaches on both sides of the bridge and narrow the road towards the bridge as they continue sourcing for funding in liason with Kenya Railways Corporation.

Committee Recommendations

244. The Committee directs the Accounting Officer of KURA to complete the dualled road approaches on both sides of the Likoni bridge and narrow the road towards the bridge, as they liaise with the KRC on budget sharing mechanism to construct a new 7.01m bridge.
245. The Committee directs the Accounting Officers of the two agencies to liaise with the Parent Ministry with a view to securing a way forward on funding for the new bridge. The two agencies should develop a budget-sharing formula to facilitate the implementation and the management and the Kenya Railway Corporation to take lead in sourcing for the funds to construct the new bridge to 7.01 metres height.
246. The Committee recommends that within six (6) months of the adoption of this Report, the Accounting Officer should submit a status report to the Office of the Auditor-General (OAG) on the progress of the three projects for verification.

9.15 Road Annuity Programme Lot 18; Kakamega, Vihiga, Bungoma & Busia

247. The Government through the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works represented by the Kenya Urban Roads Authority (KURA), identified the need to construct roads under the Road Annuity Programme Lot 18 and upgrade to bitumen standard under the Roads 10,000 programme. These roads are intended to support the primary growth sectors of commerce, tourism, agriculture and rural production, and extractive industries. The project is being implemented under Finance, Design, Build, Maintain and Transfer (FDBMT) arrangement.

248. In Western Kenya the project covered roads with a total length of 35.3 km located in four counties as follows:

County	Road Name	Road Length
Kakamega	Kakamega- Ilesi Road	7.6km
	Lutonyi-Kakamega Road	3.0km
Vihiga	Vihiga-Chavakali-Munoywa-Kiritu	6.0km
Bungoma	Mateka-Samoei Road	6.3km
	Mateka-Mwanda-Siritanyi-A104 Road	7.2km
Busia	Busia (Jnc B1)-Alupe (Jnc C43) Bypass	5.2km
Total Length		35.3km

249. The total contract sum for the entire project was Kshs.14,496,000,000 with commencement date of 16 February, 2022 and expected completion date of February, 2024.

250. Audit inspection carried out in February, 2023 revealed that;

(i). Kakamega-Ilesi road was about 70% done.

(ii). Vihiga- Chavakali- Munoywa- Kiritu was almost complete with 80% works done.

(iii). Works in the other two counties of Busia and Bungoma were still at initial/mobilization stage.

251. In the circumstances, the project is not likely to be completed within the contract period which will adversely impact realization of value for money.

Management Response

252. The works were completed and currently under operations and maintenance. The Project had faced challenges of encroachments on the Project Roads and KURA has worked efficiently in conjunction with other stakeholders to overcome the challenges. The works were completed and are currently under operations and maintenance.

Committee Observation

253. The Committee observed that the project had faced challenges of encroachment on the Project Roads and KURA had worked efficiently in conjunction with other stakeholders to overcome the challenges. The works were completed and are currently under operations and maintenance. The Committee observed that since the roads works had been completed and handover certificates availed, the matter stands resolved.

9.16 Dualling of the Nairobi Eastern Bypass Road (From Baraka Roundabout to Ruiru Kiambu Junction (63)

254. The contract for the road works was awarded to a Contractor at a contract sum Kshs.12,494,837,029. The works commenced on 14 January, 2022 for a contract period of 12 months, and was expected to be completed on 14 January, 2023. The defects liability period (DLP) was agreed at 12 months after the completion date. The scope of works involved upgrading of the existing 26.98 km Nairobi Eastern bypass road from a single 2-lane carriageway to a dual 4-lane carriageway (6-lane carriageway from Km 10+045 to Km11+688) complete with structures, drainage, lighting, and road furniture and ancillary works.

255. Review of records and audit inspection carried out in February, 2023, revealed the following;

i. Overall Project Progress

Overall, 93.7% of the work was complete while 100% contract period had elapsed. Site clearance, earthworks and road structures along the 26.98 Km road was

complete while drainage works, protection works and bituminous works were in progress.

ii. Pending Bills

As at the time of audit, in February, 2023 the amount certified for payment (including advance payments) was Kshs. 10,760,639,820 and the amount paid totaled Kshs. 9,231,244,640 resulting in a pending bill of Kshs. 1,529,395,180.

iii. Safety Challenges - Roundabout at Nairobi Gate Industrial Park

The Authority on 16 February, 2022 approved change of the road's design to include a roundabout at Githurai Kimbo Phase III link Junction due to heavy traffic on Githurai Kimbo road and especially trucks for Nairobi Gate Industrial Park. However, although the request was made in good faith, the roundabout poses safety challenges to users due to its location in the highway.

iv. Insufficient Space at U-turns

256. It was observed that there was insufficient provision for U-turn radii on most of the U-turns along the highway due to insufficient space within the road reserve and adjoining road junctions. This presents safety hazards due to limited space to accommodate safe and smooth turning of vehicles and allow- uninterrupted flow of traffic. In the circumstances, there is need to continuously monitor the project to ensure that emerging safety issues are addressed promptly.

Management Response

257. The project has since been completed and taken over by the Employer.

We confirm that there has been insufficient space to accommodate the provision of U-turns. However, safety around the U-turns has been enhanced by:

- i. Installation of rubble strips and bumps
- ii. Road marking
- iii. Installation of road signs

258. As such, we have improved the performance of turns with minimal or no incidences. Further, the U-turns have been installed in many sections, which ensures there are no traffic build-ups at the turns.

259. During the audit time, the project at the roundabout was still work in progress. The roundabout has since been completed and safety measures put in place, which includes:

- i. Installation of bumps and rubble strips
- ii. Installation of road signs
- iii. Road marking

260. As such, the safety around the roundabout has been enhanced. We have been monitoring the performance of the roundabout and we confirm that there has been no noticeable safety incidences.

261. Currently, the Contractor is yet to be paid for certified works amounting to Kshs. 1,782,676,660.

Committee Observation

262. The Committee noted from the explanation of the Accounting Officer at the time of examination that the project was complete, hand over certificate issued and the measures to enhance safety were in place. However, the Contractor was still owed Kshs. 1,782,676,660.00. The matter stands resolved.

9.17 Construction of Valley Road-Kenyatta Avenue/Ngong/Nyerere Road Interchange and Upper Hill-Haile Selassie Overpass and Associated Road Networks in Nairobi County

263. The contract for the road works was awarded to a Contractor at a contract sum Kshs.2,987,506,754. The tender notice was issued on 31 March, 2020 while the contractor was notified of award on 9 July, 2020. The contract agreement was signed on 17 September, 2020 and commenced the same day. The contract period was thirty-six (36) months with expected completion date of 17 September, 2023 and with a defects liability period (DLP) of twenty-four (24) months. The main project works covered approximately 7 Km long dual carriageway with intermittent service roads/slip roads and construction of 2 No. overpasses in Nairobi City County. The project comprises of construction of 2-lane 2-way 7.0 m wide carriageway up-grade road with raised central median, 2.0 m wide footpaths on each side of the road, 1.5m wide open drain with invert block drain and side slabs, 2 no. overpasses, road furniture and marking, bus bays, utility relocation, safety provisions and protection works, street lighting and landscaping.

264. As at 30 June, 2022, payments totaling to Kshs.219,800,000 had been made to the contractor. Further, as at the time of audit inspection carried in February, 2023, twenty-nine (29) months or 81% of the contract period had elapsed, with work

progress reported at 30.44% and financial progress made was at 12.37%. Further, certified works amounted to Kshs.975,945,069 out of which Kshs. 678,651,770 had not been paid. In addition, the contractor was not on site having suspended work due to non-payment of certified work. In the circumstances, the continued delay in payment is likely to attract interest and penalties thus escalating the project cost. Further, delay in completion of the project is an indication that the citizens may not obtain value for money on the project.

Management Response

265. The management stated that the current physical progress is at 40%. The contractor is on site and the project completion time has been extended upto 31st December, 2025.
266. The contractor had reduced his rate of works significantly due to lack of payments and is mobilizing to resume works after payment of pending bill. Efforts are being made through the Ministry to secure funds to clear the pending bills for the contractor.
267. Currently the pending bill stands at Ksh 456,784,633.14.

Committee Observation

268. The Committee observed that the project was 40% complete and that road works had stalled due to non-payment of the contractor. However, the Accounting Officer informed the Committee that a return-to-work agreement had been signed with the contractor.

Committee Recommendation

269. The Committee recommends that the Accounting Officer should prioritize completing the project before embarking on new projects.
270. Further, within three (3) months of the adoption of this report, the Accounting Officer of KURA should submit a status report on the progress of this project to the OAG for verification.

9.18 Stalled Jomvu Kuu-Jitoni-Rabai Road Project

271. The contract was awarded to a construction company at a contract sum of Kshs.1,023,765,470 on 10 July, 2017 and a revised completion date of 21 March,

2022. The main project works comprised of construction to bitumen standards of Jomvu-Kuu Jitoni Rabai road with 7.0m wide carriageway, lined drains on both sides and 2.0m wide walkways on both sides. The total length of the project is approximately 11.7km. The works are situated in Mombasa and Kilifi Counties. The project was conceived under the Low Volume Sealed Urban Roads (LVSUR). Review of records revealed that Kshs.769,948,223 had been certified as at 31 May, 2022 out of which an amount of Kshs.579,171,604 had been paid leaving an unpaid balance of Kshs.190,776,619.

272. Audit inspection exercise carried out in February, 2023 revealed that the project implementation was behind schedule going by the project extended completion date of 21 March, 2022. It was noted that seven (7) milestones had been completed out of the nine (9) programmed milestones. The works had stalled and the contractor was not on site. Further, some completed sections of the road had been worn out and required to be redone. In the circumstances, the project completion is behind schedule as approximately 11 months had elapsed from the revised project completion date of 21 March, 2022. This will adversely impact on realization of value for money by the citizens.

Management Response

273. The works were behind schedule at the time of audit mainly because of delayed payment of certified works. However, the contractor managed to complete 80% of the project length which have since been taken over and the road is open to traffic.

274. Currently the outstanding pending bill is Kshs 8,270,528.58. The contractor is to resume to complete his contractual obligations.

Committee Observation

275. The Committee observed at the time of examination that the project was at 80% completion. However, the contractor had abandoned the site and was set to resume in May, 2025.

276. The Committee noted that the completed section of the road, which had been opened for use, had deteriorated—primarily due to heavy lorry traffic.

Committee Recommendation

277. The Committee directs the Accounting Officer to dispatch a technical team to assess the quality of the road works, with a view to recommending possible solutions to address the rapid deterioration of the road.

278. Further, the Committee directs that within three (3) months of the adoption of this report, the Accounting Officer to submit to the Office of the Auditor-General (OAG) a report on the progress of the road's construction and repair.

9.19 Upgrading to Bitumen Standards of Mlolongo-Athi River-Joska Roads

279. The contract for the road works was awarded to a Contractor at an original contract sum of Kshs.2,193,745,878 and later revised to Kshs.2,730,964,561 on 24 September, 2022 for a contract duration of twelve (12) months with an expected completion date of 14 October, 2023 and a twelve (12) months defects liability period. The original scope of the project involved construction of single carriageways of approximately 15kms of Mlolongo-Athi River-Joska Roads in Machakos County. This was however revised to include additional works at Uhuru Gardens, Nairobi as emergency works for the purpose of movement in and around the venue during Madaraka Day 2021 celebrations. The main works included construction to bitumen standards of the carriageways, footpaths on either side of the carriageways, lined drains on either side of the road, road furniture and markings, utility relocation and safety provisions and protection works.

280. As at the time of audit inspection in February, 2023, twenty-nine (29) months or 76% of the contract duration had elapsed while 61% work had been completed. Further, the total amount certified for payment was Kshs.1,797,696,787 while the amount paid was Kshs.833,029,058 thus leaving pending payments of Kshs.964,667,729.

281. Further, the contractor had withdrawn from site due to non - payment of the certified amount of Kshs.964,667,729. In the circumstances, the Authority has breached contractual obligation due to nonpayment of certified works.

Management Response

282. The management stated that current physical progress is at 65%. The contractor is on site and the project completion time has been extended upto 31st December, 2025.

283. The contractor had suspended works due to lack of payments and resumed works after payment of pending bill. Currently the outstanding pending bill is Kshs 817,506,948.05.

Committee Observations

284. The Committee observed at the time of examination that the road works were ongoing, and a completion date was set on 31st December 2025. However, the Committee notes that given the huge amount of the pending bill, it was unlikely that the road would be complete on the set completion date.
285. The Committee further noted that in regards to the additional works at Uhuru Gardens, Nairobi, the works had been completed and the road was opened to the public.

Committee Recommendation

286. The Committee recommends that within three (3) months of the adoption of this report, the Accounting Officer should submit to the Office of the Auditor-General (OAG) a report on the progress of the road's construction.

9.20 Upgrading to Bitumen Standards of Mombasa Road (Devki)-Kinanie Park/Kinanie Leather, Machakos County

287. The contract was awarded to a consortium at a contract sum of Kshs.1,785,779,142 on 15 July, 2021 with a contract period of 36 months and expected completion date of 14 July, 2024. The project is situated in Machakos County. The works comprise upgrading to bitumen standards of Mombasa Road (Devki)-Kinanie Park/Kinanie Leather Park to include 7.0m wide carriageway, lined drains on both sides and 2.0m wide walkways on both sides on a 25km distance.
288. As at the time of audit in February, 2023, progress was 41% while time elapsed was 18 months (50% of contract period). The amount paid on the contract was Kshs.238,434,076 out of total works certified of Kshs.476,005,001 resulting to unpaid certified amount of Kshs.237,570,925. In the circumstances, there is a risk of breach of contractual obligation by the Authority and the delayed payment may attract interest and penalties thus escalating the project cost.

Management Response

289. The management stated that the current physical progress is at 60%. The contractor is on site and the project completion time has been extended upto 14th January, 2026.

290. The contractor had suspended works due to lack of payments and resumed works after payment of the pending bill. Currently, the outstanding pending bill is Kshs 237,570,925.

Committee Observation

291. The Committee observed that the project had slowed down due to financial challenges; however, the works were ongoing with a project completion date of 14th January, 2026.

Committee Recommendation

292. The Committee recommends that within three (3) months of the adoption of this report, the Accounting Officer should submit to the Office of the Auditor-General (OAG) a report on the progress of the road's construction.

9.21 Upgrading to Bitumen Standards of Roads Within East Africa Portland Housing Scheme-Machakos County

293. The contract was awarded to a Contractor at a contract sum of Kshs. 1,532,891,267 on 14 April, 2021, for a contract period of thirty (30) months with an expected completion date of 26 December, 2023. The project is located at East Africa Portland land in Machakos County with a total length of 15Km to provide access to affordable housing units. The scope of works includes site clearance for the whole road reserve, earthworks to formation level and construction of 300-450 mm improved sub-grade. As at the time of audit in February, 2023, twenty (20) months or 66% of contract period had elapsed with progress of work estimated at 50%, implying that the contractor was slightly behind schedule. Further, the contractor was not on site and it was indicated that he had scaled down operations due to delayed payments.

294. In the circumstances, the Authority risks incurring interest and penalties due to nonpayment. Further, citizens may not get value for money on the project.

Management Response

295. The management stated that the project road is 15km and out of which 13.5km has been constructed to bitumen standards. The current physical progress is at 86%. The contractor is on site and the project completion time has been extended up to 31st July, 2025.

296. During the audit, the contractor had suspended works due to lack of payments.
297. The pending bill for the project currently is Ksh 193,264,170.08.

Committee Observation

298. The Committee observed at the time of examination that the project was progressing well, with 86% completion, and urged the management of KURA to ensure adherence to the project completion timeline.
299. Further, the Committee observed that there was need for the management to extend the road to connect with Namanga Road in order to enhance accessibility and open up the area.

Committee Recommendation

300. The Committee recommends that within three (3) months of the adoption of this report, the Accounting Officer should submit to the Office of the Auditor-General (OAG) a report on the progress of the road's construction.

9.22 Upgrading to Bitumen Standards of Kwale and Ukunda Township Roads

301. The contract was awarded to a Contractor at a contract sum of Kshs.529,440,462. The project is located within Kwale Town, Matuga Constituency and Ukunda Township in Msambweni Constituency all in Kwale County.
302. The main works comprise of construction of single carriageway gravel roads to bitumen standards, construction of walkways and related drainage facilities. The roads to be upgraded are 1.38 km Kwale Tsimba Clinic Road, 1.48 km Bongwe-Ibiza-Ukunda Road and 3.83 km Diani Markaz Shamu Primary School. The works to be executed included site clearance, pavement construction, drainage and protection works, installation of road furniture, relocation of services and other ancillary works including guardrails where necessary.
303. Audit inspection carried out in February, 2023 revealed that while works on the Kwale Tsimba Clinic section was 97% complete with only road markings and road furniture installation remaining, the other two sections were below 30% completion and the contractor was not on site. The constructed drainage on the Kwale town section had overgrown bushes a sign of neglect or lack of site maintenance by the contractor. In the circumstances, there is a risk that citizens may not get full value for money on the project.

Management Response

304. The contractor had scaled down his operations due to delayed payments. The contractor resumed normal operations in May 2023 and has embarked on maintaining completed works on the aforementioned road. The contractor fast tracked and completed all the works and it is under defects liability.

Committee Observation

305. The Committee observed from the explanation of the Accounting Officer at the time of examination that the project had been completed and a handover certificate issued, hence the matter stands resolved.

10. Interest on Late Payments

306. Review of records revealed that there were claims of interest on late payment to contractors in respect of seven (7) projects undertaken by the Authority totaling to Kshs.110,438,332 which had accrued as at 30 June, 2022. Interest on delayed payments represents unnecessary additional charge to public funds beyond the projects' cost. In the circumstances, the interest on delayed payment represents nugatory expenditure which could have been avoided had the Authority made the payments to the contractors within the agreed contract duration.

Management Response

307. The management stated that the Interest on delayed payments accrued as a result of late payments to the contractor and is governed by the contract provisions. This is necessitated by late disbursement of funds by the National Treasury. All claims relating to interest on delayed payments go through the approved procedures before they are paid. To this extent, the management can confirm that there were no irregular accruals of costs relating to interest.

Committee Observation

308. The Committee observed from the Accounting Officer's submission that the Agency experienced challenges in settling its bills on time due to delays in fund disbursement by the National Treasury. This resulted in the accumulation of interest charges on late payments.

Committee Recommendation

309. The Committee directs the Accounting Officer of KURA to ensure that all future financial commitments strictly align with approved budgets and procurement plans. Further, within three (3) months of adoption of this report, the Accounting Officer to submit a status report on the pending bills, detailing the efforts being undertaken by management to settle them, to the Office of the Auditor-General for verification.
310. The Committee recommends that within six (6) months of adoption of this report, the Accounting Officer to submit a comprehensive report to the National Assembly on the intended securitization of the Road maintenance Levy Fund (RMLF) and the progress it has made in tackling stalled road projects and the pending bills.

11. Non-Preparation of Separate Financial Statements for Staff Mortgage Scheme

311. During the year under review, Management did not prepare separate financial statements for the Staff Mortgage Scheme. However, the Funds operations were reported together with the Authority's financial statements. This contravened Regulation 221(1) of the Public Finance Management (National Government) Regulations, 2015 which states that the accounting officer for a national government entity listed in Schedule 2 and 3 shall prepare and submit annual financial and non-financial statements in the format gazetted by the Cabinet Secretary within three months to the Auditor General with copies to the responsible Cabinet Secretary and the National Treasury.
312. In the circumstances, Management was in breach of the law.

Management Response

313. The management stated that this practice is applicable to the mortgage schemes established under the State Officers House Scheme Fund regulations under Gazette notice No. 23 of 6th March 2015. The Authority's staff mortgage Scheme is guarantee-based and is administered externally. Therefore, not subject to separate financial statements. The bank shares periodic reports showing the movement in the fund balance and accounted for under statement of changes in net Assets in the financial statements.

Committee Observation

314. The Committee observed from the explanation of the Accounting Officer at the time of examination that the reporting on the staff mortgage was governed by the State Officers House Scheme Fund Regulations, as outlined in Gazette Notice No. 23 of 6th March 2015 and not Regulation 221(1) of the Public Finance Management (National Government) Regulations, 2015, hence the matter is resolved.

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

12.0. Under Establishment of Human Resources

315. Review of human resources records revealed that the Authority has an approved harmonized staff establishment of 639 staff with only 287 in post resulting to an under establishment of 352 staff leading to an understaffing of 55%.

316. Further analysis of the records revealed that:

- i. Two out of the six required directors' Positions-Grade 2 (Director, Urban Roads Planning and Design and Audit Services) were not filled.
- ii. Nine out of the thirty-one required Deputy Director Positions-Grade 3, were not filled with three positions out of the nine filled on acting capacity.
- iii. Forty-eight Assistant Director-Grade 4, positions out of the 75 required positions were not filled.
- iv. Departments such as Office of Director Policy, Strategy and Compliance, Research and Innovation Department, Quality Assurance and Compliance Department, Office of the Director Corporate Services and Office of the Director Audit Services have less than 2 staff with others having none.
- v. Departments such as the Road Asset Management, Survey Department, Special Projects Department, Legal Services and all regional offices have less than half of the required staff.
- vi. The Top management levels-Grade 1 to Grade 4, are understaffed by 49.6% with only 57 of the required 113 Assistant Directors, Deputy Directors and Directors in post.

317. In the circumstances, Management was in breach of the approved staff establishment and the Authority may not be able to meet its mandate and objectives due to the understaffing.

Management Response

318. The management stated that there have been various circulars freezing recruitment which has impacted on the employment of new staff and this has been compounded by budgetary constraints and the Government Austerity measures. However, we have continued seeking approval for recruitment from the National Treasury and carried out recruitment where approval is granted. Further requests to recruit are subject to the approval of and availability of adequate resources.

Committee Observation

319. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had taken steps to fill critical staffing gaps at the project implementation level by recruiting nineteen engineers. The Committee observes that the matter is resolved.

3.2 KENYA RURAL ROADS AUTHORITY (KeRRA)

EXAMINATION OF THE AUDITED ACCOUNTS OF KENYA RURAL ROADS AUTHORITY FOR THE FY 2020/2021 AND FY 2021/2022

320. The management of the Kenya Rural Roads Authority, led by the Director General, Eng. Philemon K. Kandie, MBS, appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2020/21 and FY 2021/22.

FINANCIAL YEAR 2020/2021

1. Receivables From Non-Exchange Transactions

321. The Statement of financial position reflects receivables from non-exchange transactions balance of Kshs 4,145,460,000 as disclosed in Note 19b to the financial statements. Included in the balances is advances to staff amount of kshs 45,562,000 out of which a balance of kshs 43,349,871 relates to previous years with some dating back to the year 2019.

322. In the circumstances, the recoverability of the receivables is doubtful, and the accuracy of the long outstanding balances of kshs 43,349,871 could not be confirmed.

Management Response

323. The Accounting Officer noted the Auditors' observations and stated that the figure Kshs. 43,349,871 relates to Staff imprest and advances for KeRRA staff in the 47 Regional Offices. All the imprests due had been fully accounted for and advances recovered.

324. At the time of examination, the outstanding amount as at 30th June 2024 was Kshs 11,527,045.

Committee Observations

325. The Committee observed from the explanation of the Accounting Officer at the time of examination that staff advances were part of the policy guidelines of the Authority, but limited to only special circumstances.

326. The Committee noted that the Accounting Officer had recovered outstanding staff imprests, but a total of Kshs. 11million as advances were still pending and unrecovered.

Committee Recommendations

327. The Committee recommends that within three (3) months upon the adoption of this report, the Accounting Officer should expedite the recovery of the outstanding advances and submit a status report to the OAG.

2. Unresolved Prior Year Matters

328. In the audit report of the previous year, a number of issues were raised under the Report on the Financial Statements and Report on the Lawfulness and Effectiveness in Use of Public Resources. However, the issues remained outstanding as at 30 June 2021.

Management Response

329. The Accounting Officer noted the Auditors' observations and informed the Committee that all Prior Year matters were presented to the Public Investments Committee (PIC) and resolved in 2022.

Committee Observation

330. The Committee observed at the time of examination that prior year matters were resolved in 2022 hence the query is resolved.

3.0 Irregular Payment of Rent and Rates

331. The Statement of financial performance reflects other operating costs of Kshs 477,684,000 as disclosed in Note 16 to the financial statements. The amount includes rent and rates amount of kshs 18,0630,000, out of which Kshs 17,758,000 was incurred on rent charges for office space measuring 18,745 square feet at Blue Shield Towers for the period between 01 October 2019 to 1st April 2020. Review of records revealed that the Authority entered into a six-year lease agreement for office space on 1st April 2014. However, vide letter dated 3rd September 2019. Management gave notice of intention to vacate the building by 30th September 2019, but indicated that the lease period would end on 1st April 2020. The Authority, therefore, paid rent charges for office space that was not utilized.

332. In the circumstances, value for money may not have been obtained on the expenditure of kshs 17,758,000 incurred on rent charges.

Management Response

333. The Accounting Officer stated that payment for the rent and rates at Blue Shield offices were within the terms of the lease. Though offices were vacant, the lease agreement required the Authority to restore the building to its original state before handing over the premises. Restoration could not be undertaken when the building was still occupied, and thus lease payments were still due until the building was officially handed over.

Committee Observations

334. The Committee observed from the explanation of the Accounting Officer at the time of examination that an amount of Kshs.17,758,00 was incurred within a six-months period, during which KeRRA was in the process of vacating the building. The process involved demolitions, repairs and other activities. The Authority was required to leave the rented building in its original state upon vacating, in compliance with the terms of the lease.
335. Additionally, the Committee observed that the Authority legally occupied the building and vacated after restoring it to its original state.
336. The Committee observed that since the Authority legally occupied the building and vacated after restoring it to its original state, hence the matter is resolved.

4. Avoidable Interest on Delayed Payments

337. The Statement of financial Position as disclosed in Note 24 to the financial statements reflects payables from exchange transactions balance of Kshs 29,636,936,000 which includes an amount of Kshs 28,174,015,000 that was due to contractors. Further, as previously reported, the Authority continues to incur interest expenses on account of delayed payments to contractors. Review of related records revealed that as at 30th June 2021 the Authority had accumulated interest on delayed payments amounting to Kshs 1,891,100,494 (2020 Kshs 220,621,047)
338. Although Management has explained that this was occasioned by delayed exchequer releases, the interest charged was avoidable expenditure and therefore not a proper charge to public funds.

Management Response

339. The Accounting Officer submitted that the interest on delayed payments had been occasioned by Inadequate budgetary allocation for projects and delayed exchequer releases.
340. Additionally, the budgetary allocation to projects was often less than the contractor capacity to generate payment certificates, thus leading to an accumulation of pending bills and hence the interest charges.
341. The Authority continues to engage the National Treasury and Ministry of Roads and Transport for increased budgetary allocations and timely release of Exchequer.

Committee Observations

342. The Committee observed from the explanation of the Accounting Officer at the time of examination that the interests on delayed payments were accruing as a result of pending bills.
343. The Committee noted that KeRRA had accumulated a total sum of Kshs. 66,025,495,545.25 as pending bills.

Committee Recommendations

344. The Committee recommends that the management should prioritize completing the pending projects before embarking on any new projects in order to reduce the interests accruing on delayed payments.
345. Further, within three (3) months upon the adoption of this report, the Accounting Officer should expedite the engagements with the National Treasury in order to obtain a way forward on the pending bills and submit a status report on the pending bills and interests.

5. Acting Appointments

346. The statement of financial performance reflects directors' costs and employment costs of Kshs 13,394,000 and Kshs 2,586,488,000 respectively as disclosed in Note 13 and Note 14 to the financial statements. The amounts included acting allowance of Kshs 378,000 and Kshs 835,920 paid to two (2) members of staff. Review of personnel records revealed that the two (2) employees have been on acting capacity for a period of over six (6) months contrary to the requirements of Sec C.14 of the Public Services Commission

Human Resources Policies and Procedures Manual. In the circumstances, Management was in breach of the regulations.

Management Response

347. The Accounting Officer stated that the management acted, and later the positions were substantively filled.

Committee observation

348. The Committee observed from the explanation of the Accounting Officer at the time of examination that the positions have been substantively filled; hence, the matter is resolved.

6. Stalled And Slow-Moving Projects

349. Physical Inspection and review of records for road projects revealed that projects with a combined contract sum totaling to Kshs 60,204,947,107 had either stalled or had recorded slow progress. In addition, the Authority had awarded various contracts for the upgrading of roads to bitumen standard and maintenance. Review of progress reports on these works indicated the projects with combined contracts sum of KShs 21,612,655,224 were progressing slowly with some projects having exceeded project duration. In the circumstances, value for money on amounts spent on these projects could not be confirmed.

Management Response

350. The Accounting Officer submitted that the projects had faced a number of challenges which including but not limited to:

- i. Inadequate budgetary allocations and late exchequer release.
- ii. Re-location of Utility services constructed on the road corridor.
- iii. Land compensation issues.

351. These challenges were being addressed on a project-by-project basis, and where applicable project termination clause could be invoked.

352. The Accounting officer further informed the Committee that most of the Projects' major challenge was inadequate budgetary allocation, which led to slow progress of works and eventually stalled projects.

Committee Observation

353. The Committee observed from the explanation of the Accounting Officer at the time of examination that pending bills significantly impacted the ongoing and planned infrastructural projects in the road sector, thus an increase in stalled projects.

Committee Recommendation

354. The Committee recommends that the accounting officer should prioritize completing the pending projects before embarking on any new projects.

355. Further, within three (3) months upon adoption of this report, the Accounting Officer should expedite the engagements with the National Treasury in order to obtain a way forward on the pending projects and submit a status report on the utilization of the securitization of the fuel levy in paying pending bills and interests.

7. Lack of a Fixed Asset Register

356. Management did not maintain a fixed asset register as at 30th June 2021, as required by section 143 (1) of the Public Finance Management Act (National Government), which states that the Accounting Office shall be responsible for the maintaining a register of assets under his or her control or possession.

357. In the circumstances, Authority assets may not be fully accounted for and may be at risk of loss

Management Response

358. The Accounting Officer noted the observations of the Auditor and submitted that the Authority currently maintains a fixed asset register. The Management had however incorporated all the details in the fixed asset register as required by the policy guidelines issued by the National Treasury.

Committee observation

359. The Committee observed from the explanation of the Accounting Officer at the time of examination that the attached fixed asset register was updated and verified by the OAG, hence the matter is resolved.

FINANCIAL YEAR 2021/2022

8. Unreconciled Development Partner Grants

360. The Statement of financial performance and Note 8 of the financial statement reflects Development Partners Grant Totaling to Kshs 520,945,000 in respect to Bank for Economic Development in Africa (BADEA) Kshs 476,150,000 and European Union Kshs 44,795,000. Review of the project audited accounts revealed "Gilgil Machinery" Road Project file funded by BADEA revealed that Kshs 414,210,668 was disbursed to the Project and Kshs 5,000,000 was disbursed towards German Development Bank (KFW) resulting to unexplained and unreconciled variances of Kshs 61,939,332 and Kshs 5,000,000 respectively.
361. In the circumstances, the accuracy of development partner grant amount of Kshs 520,945,000 could not be confirmed.

Management Response

362. The Accounting Officer submitted that the unreconciled variances of Kshs 61,939,332 and Kshs 5,000,000 for BADEA and KFW respectively, were as a result of the accounting treatment used. Donor Funds are accounted on cash basis while the KeRRA main accounts are accounted on accrual basis.

Committee Observation

363. The Committee observed from the explanation of the Accounting Officer at the time of examination that the variances were as a result of presentation of accounting information and a reconciliation was done; hence, the matter is resolved.

9. Road Works Expenditure

9.1. Road Maintenance Levy Fund (RMLF)

364. The Statement of financial Performance and Note 12 to the financial statements reflects road works expenditure totaling to Kshs 40,197,725,000. Included in this expenditure is RMLF 22% constituency Roads Fund of Kshs 7,950,824,000 while the trial balance provided for audit review reflected an amount of Kshs 7,892,511,000 resulting to a variance of Kshs 58,313,000 which was not reconciled.
365. Further, the Expenditure of Kshs 7,950,824,000 under constituency roads fund and Kshs 3,994,932,000 on critical link roads against road maintenance levy of Kshs 7,510,716,000 and Kshs 3,329,411,000, respectively, resulting to over expenditure

of Kshs 440,108,000 and Kshs 665,521,000 was not explained or supported. In addition, the basis for the allocation among the specific funds was not provided.

366. In the circumstances, the accuracy of the RMLF 22% constituency Roads Fund amount of Kshs 7,950,824,000 and road maintenance levy fund expenditure of Kshs 870,813,000 could not be confirmed.

Management Response

367. The Accounting Officer submitted that—

- i) The Variance in expenditure under RMLF 22% roadworks is represented by Road Works Force Account GL 9000100 of Kshs 58,312,969.97. The Regional offices execute works under force account which is normally reported as part of 22% Roads Works because the funding source is the 22% RMLF allocations.
- ii) The Authority receives funds under constituency roads funds 22% and critical link roads 10%. The Over expenditure is as a result carry over funds from the previous financial periods. Therefore, the current periods expenditure may not match the levy received in the year under review.

Committee Observation

368. The Committee observed from the explanation of the Accounting Officer at the time of examination that the reconciliation had been done in the books of accounts of the entity, thus, the matter stands resolved.

9.2. Donor Funded Projects

369. The statement of financial performance and Note 12 to financial statement reflects road works expenditure totaling to ksh 40,197,725,000. Included in the road works expenditure totaling to Kshs 40,197,725,000 is an amount of Kshs 870,813,000 under Donor Funded Projects. However, review of financial records under the projects revealed that Kshs 414,210,670., Kshs 44,974,887 and Kshs 5,000,000 was disbursed to BADEA. EU and KFW projects respectively all totaling to Kshs 464,185,557 resulting to an explained and unsupported variance of Kshs 406,627,443. In addition, the corresponding revenue for German Development Bank (KFW) was not captured in the statement of financial performance.

370. In the Circumstances, the accuracy of Donor funded projects of Kshs 870,813,000 could not be confirmed.

Management Response

371. The Accounting Officer clarified that the variances were as a result of the accounting treatment used. Donor Funds are accounted on cash basis while the KeRRA main accounts are accounted on accrual basis.

Committee Observation

372. The Committee observed from the explanation of the Accounting Officer at the time of examination that the variances were as a result of the presentation of the accounting information and a reconciliation was done; hence, the matter is resolved.

9.3. GoK Spot Improvement Funds

373. Included in the road works expenditure of Kshs.40,197,725,000 is an amount of Kshs.18,072,580,000 incurred under GoK Spot Improvement Funds. However, review of records revealed that Kshs. 17,799,054,000 was received under this item resulting in an underfunding of Kshs. 273,526,000. Further, expenditure analysis provided resulted to an amount of Kshs. 18,075,429,682 as analyzed below resulting to a variance of Kshs. 2,849,682, which was not explained or supported

Item	Kshs.
RW GOK_Maintenance_Projects	15,702,892,608
Socio Economic Baseline, Monitoring and Evaluation	(154,700)
Survey and Road Mapping	24,976,221
Environmental Sustainability	(512,950)
Axle Load Monitoring, Traffic Census and Road Safety	15,669,994
Emergency Culverts and Bridges	712,640
ARICS	781,600
Routine & spot improvement	437,381,847
Periodic Maintenance	1,859,650,262
Axle Load	176,400
LVS Management Cost	33,855,759
Sub Total	18,075,429,681

374. In the circumstances, the accuracy of GOK Spot Improvement Funds expenditure of Kshs 18,072,580,000 could not be confirmed.

Management Response

375. The Accounting Officer submitted that the Authority received kshs 17,799,054,000 for Gok Spot Improvement and spent Kshs 18,072,580,000 under the same funding. The underfunding of Kshs. 273,526,000 was covered by carry over funds from previous financial year periods.

Committee Observation

376. The Committee observed from the explanation of the Accounting Officer at the time of examination that the underfunding of Kshs. 273,526,000 was covered by carry over funds from the previous financial year and a reconciliation was done hence the matter is resolved.

10. Expenditure Of Overheads from Bill One Deductions

377. Analysis of expenditure shows that a total of Kshs.4,197,279,000 was spent on overheads out of which Kshs.804,082,000 was financed by Kenya Roads Board Overheads allocation and Kshs.3,393,197,000 financed by bill one deductions from contracts. It was further noted that Kshs 2,953,523,000 from bill one was used to finance office operational cost which were non-roads related expenditure. It was also noted that the Authority reported a surplus of Kshs.2,706,634,000 which was financed from bill one expenditure of Kshs.2,953,523 000 as shown in the table below;

Total Expenditure	Amount Kshs.
Directors Costs	32,085,000
Employment Costs	2,821,451,000
Repairs and Maintenance	169,130,000
Other Operating Costs	1,174,613,000
Total Expenditure	4,197,279,000
Less: Utilization from KRB Funds (KRB Receipt Operations - Operating Surplus)	(804,082,000)
Expenditure from bill one	3,393,197,000
Less Expenditure related to Roads: CRC and Tender Evaluation	(216,437,000)
Less Expenditure related to Roads: Fuel and Other Vehicle Running Expenses	(173,468,000)

Less Expenditure related to Roads: Motor vehicles repairs and maintenance	(49,769,000)
Total Expenditure for bill one used for other overheads	2,953,523,000

In the circumstances, the validity of the expenditure totaling to Kshs. 2,953,523,000 could not be confirmed.

Management Response

378. The Accounting Officer submitted as follows—

- i) The Authority is funded for operations through the fuel levy Fund. In the year under review the Authority received KShs 3,510,716,000 from KRB for operations.

The overhead/operations Revised budget for the period was Kshs 5,544,366,000 and the expenditure was Kshs 4,197,279,000 as indicated in the financial statements. The expenditure was within the revised budget for 2021/2022 FY.

- ii) The Authority has clear guidelines on usage of bill one. Bill one for various projects is used for supervision purposes only for the specific projects and expensed against roadworks. This is because of inadequate overheads budget allocation from Kenya Roads Board.

Committee observation

379. The Committee observed that at the time of examination, a reconciliation summary of the overheads was submitted and verified by the OAG, hence the matter stands resolved.

11. Unsupported Security Expenses

380. The statement of financial performance and Note 16 to the financial statements reflects other operating costs totaling to Kshs.1,174,613,000. Included in this amount is an expenditure of Kshs.111,091,000 incurred on security of which an amount is Kshs.45,457,960 paid for arbitration proceedings between the Authority and a security firm. No explanation was provided on why the expenditure was not charged under legal fees. Review of records indicated that security services pending bill for security firm amounted to Kshs.27,500,000. The basis for the payment of Kshs.45,457,960 was not provided.

381. In addition, included in the security expenditure of Kshs.111,091,000 is a payment of Kshs.7,004,804 made to another security firm being claim as a result of reconciliation of previous payments. No analysis indicating previous payments was provided for audit verification as indicated in KeRRA Internal Memo Letter Ref. No: KeRRA/02/3/38/Vol.5(11) dated 16 November, 2021. The full contract agreement was also not provided for audit. Further, the security firm had no security pending bills as per the budget.

382. In the circumstances, the validity of security payments totaling Kshs. 52,462,764 could not be confirmed.

Management Response

383. The Accounting Officer submitted as follows—

- i) The expenditure was not a legal cost but a security cost for services rendered, referred to an arbitrator. The basis of payment of kshs45,457,960 was as a result of the arbitration award. Total Security requested for the Payment to be made directly to their Lawyer Nyaanga and Mughisa Advocates Copy Attached.
- ii) For the payment of kshs 7,004,804 Babs Security - analysis of the reconciliation, a copy of the contract document and an extract of the revised budget 2021-2022 was attached.

Committee observation

384. The Committee observed at the time of examination that the management did not avail the security contract agreement and other supporting documents with regards to the payment of Kshs 7,004,804 for scrutiny and verification hence the explanation by the Accounting Office was unsatisfactory.

Committee recommendation

385. The Committee directs that within three (3) months of adoption of this report, the Accounting Officer should recover the Kshs 7,004,804 and submit a status report to the OAG.

12. Unsupported Foreign Travel by Non -Executive Directors

386. The statement of financial performance and Note 13 reflects Directors' costs amount of Kshs. 32,085,000 This amount constitutes executive and non-executive

directors' costs of Kshs. 11,008,000 and Kshs. 21,078,000 respectively. Included in the non-executive directors' costs of Kshs.21,078,000 is an amount of Kshs.9,483,878 incurred on foreign travel and subsistence but charged under subsistence local expenses. Further, the expenditure on foreign travel to Turkey of Kshs.2,969,007, South Africa of Kshs.1,625,912 and Israel of Kshs.4,888,958 was not supported with boarding passes and approved work plans as evidence that the journeys had been factored in the work plans. In addition, the expenditure exceeded the directors overseas travel budget of Kshs.1,198,000.

387. In the Circumstances, the accuracy and validity of non-executive balance of Kshs 21,078,000 could not be confirmed.

Management Response

388. The Accounting Officer submitted as follows—

- i) The Authority's non-executive directors incurred expenditure on foreign travel to Turkey, South Africa and Israel on various dates as per their approved work plan. Management hereby provides the boarding passes and approved work plan for foreign Travel for review.
- ii) The approved budget for directors was Kshs 12,980,000 against an expenditure of Kshs. 9,483,878 therefore there was no over expenditure. The budget was drawn from the vote heads as shown below.

Vote head	Details	Amount kshs
52505	Directors_ subsistence_ overseas	8,800,000
52506	Directors_ Transport_ overseas	1,073,000
52520	Directors_ conference/training_ overseas	3,107,000
Total		12,980,000

Committee Observation

389. The Committee observed from the explanation of the Accounting Officer at the time of examination that Management provided the boarding passes and approved work plan for foreign Travel, which indicated that there was no over expenditure hence the matter is resolved.

13. Unreconciled Employment Costs

390. The statement of financial performance reflects employment costs totaling to Kshs. 2,821,451,000 which includes salaries and wages totaling to Kshs. 1,881,261,000. Included in the amount is Kshs.6,617,168 paid to interns engaged during the year. Scrutiny of the approved interns' payroll for the month of April, 2022 revealed inconsistencies between the interns' payroll and the payroll reconciliation summary as analyzed below: -

	Interns payroll Kshs	Payroll reconciliation summary Kshs	Variance Kshs
NHIF Relief	7,290	7,928	(638)
Personal Relief	136,800	144,000	(7,200)
Salary	1,355,000	1,430,000	(75,000)
Basic Pay Arrears	149,515	344,675	(195,160)
Total Earnings	1,504,515	1,926,602	(422,087)
NHIF	48,600	52,850	(4,250)
NSSF	11,400	12,000	(600)
PAYE	42,941	100,698	(57,757)
Total	3,256,061	4,018,753	(762,692)

391. In the circumstances, the accuracy and completeness of the salaries and wages of Kshs.1,881,261,000 could not be confirmed.

Management Response

392. The Accounting Officer submitted that the actual pays slips and amount paid through the bank were correct. There were however system inaccuracies in the reports generated which have since been corrected.

Committee Observation

393. The Committee observed from the explanation of the Accounting Officer at the time of examination that the system inaccuracies regarding reports generated on salaries had been corrected and the amounts were reconciled hence the matter is resolved.

14. Cash And Cash Equivalents

394. The statement of financial position and as disclosed in Note 18 to the financial statements reflects cash and cash equivalents balance of Kshs.44,527,506,000. Review of bank reconciliation statements in respect of RMLF Operations Account, Salaries Account and Roadworks account under Headquarters revealed un-presented cheques which had gone stale amounting to Kshs.25,648,898, Kshs.1,308,690 and Kshs.736,145 respectively.
395. Further, analysis provided under summary of cash and bank balances in KeRRA head office reflects 3 bank accounts with cumulative retention funds of Kshs.2,604,405,029 as at 30 June, 2022. However, note 24 to the financial statements reflects contract retention totaling to Kshs. 7,985,152,000 as at the same date. The variance of Kshs.5,380,746,971 was not explained or reconciled.
396. In the circumstances, the accuracy of cash and cash equivalents balance of Kshs.44,527,506,000 could not be confirmed

Management Response

397. The Accounting Officer submitted that—
- i) Management has undertaken appropriate corrective action on all the outstanding items in the reconciliation in the subsequent financial period.
 - ii) The Reconciliations have been submitted.

Committee Observation

398. The Committee observed from the explanation of the Accounting Officer at the time of examination that a reconciliation was done by the management on all the outstanding items in the cash and cash equivalent hence the matter is resolved.

15. Long Outstanding Staff Advances

399. The statement of financial position as at 30 June, 2022 reflects receivables from non-exchange transaction balance of Kshs.1,665,795,000 which includes; advances to staff of Kshs.43,271,000, deposits and prepayments of Kshs.64,223,000 and other receivables of Kshs.1,558,302,000. Advances to staff consists of staff imprest of Kshs. 40,676,791 and staff advances of Kshs. 2,594,154 totaling Kshs. 43,270,945 which has not been recovered. Some of these advances date back to the year, 2019.

400. In the circumstances, the recoverability of staff advances of Kshs.43,271,000 could not be confirmed.

Management Response

401. The Accounting Officer informed the Committee that Staff imprests of kshs 40,676,791.00 relates amounts issued to the Authority's staff in the 47 regions to undertake activities as per KeRRA's mandate. The Imprests continue to be surrendered by staff and where necessary recovery measures have been instituted against staff where communication is received that the activity was not undertaken. The current aged staff imprests amounts to **kshs.11,527,045**. The Current Aged Staff imprests was submitted.

402. Staff Advances of kshs 2,594,154.45 have been fully accounted for in the subsequent financial years

Committee Observation

403. The Committee observed from the explanation of the Accounting Officer at the time of examination that the staff advances had been fully recovered and the documentary evidence submitted by the Accounting Officer was satisfactory hence the matter is resolved.

16. Failure To Revalue Fully Depreciated Fixed Assets in Use

404. Fixed assets amounting to Kshs.819,328,471 included in the Authority's asset register were fully depreciated, still in use and had not been revalued as detailed below;

Fixed Asset	Acquisition Cost Kshs.
Building	1,769,314
Plant and Machinery	52,852,955
Motor Vehicles	421,760,160
Office Equipment	20,901,583
Furniture and Fittings	117,850,008
Computers and Software	204,194,451
Total	819,328,471

405. This is contrary to Paragraph 49 of the International Public Sector Accounting Standard (IPSAS) No.17 on property, plant and equipment, which provides for revaluation of property plant and equipment every three to five years.
406. In the circumstances, the fair valuation of the fully depreciated property, plant and equipment with a cost of Kshs. 819,328,471 could not be confirmed.

Management Response

The Accounting Officer submitted as follows—

407. (IPSAS) No.17 on property, plant and equipment, provides for revaluation of property plant and equipment every three to five years. The revaluation process is, however a costly affair that require adequate financial planning with the inadequate budgetary allocation
408. The Authority has undertaken the process of disposal of the assets and will carry out valuation as may be appropriate for the asset category and derecognize fully depreciated assets where applicable.

Committee observation

409. The Committee observed from the explanation of the Accounting Officer at the time of examination that the Authority had not carried out revaluation of the depreciated assets, and the documentary evidence submitted by the Accounting Officer was not satisfactory.

Committee Recommendation

410. The Committee reprimands the Accounting Officer for breaching the International Public Sector Accounting Standard (IPSAS) No.17 and directs that within three (3) months upon the adoption of this report, the Accounting Officer to carry out the revaluation of depreciated assets and submit a report to the OAG.

17. Lack Of Roads Inventory

411. The statement of financial position and as disclosed at Note 22 to the financial statements reflects road infrastructure assets balance of Kshs.124,175,119,000 comprising of a balance brought forward of Kshs.118,640,409,000 and transfer from work in progress of Kshs.5,534,710 during the year. However, Management did not provide an inventory of the roads under the Authority.

412. In the circumstances, the accuracy, completeness and validity of roads infrastructure assets totaling to Kshs, 124,175,119,000 could not be confirmed.

Management Response

413. The Accounting Officer submitted that the Road Inventory for the Authority is provided vide gazette supplement no 4 of 22nd January 2016. The Authority submitted the Gazette Notice and a roads inventory for review.

Committee observation

414. The Committee observed from the explanation of the Accounting Officer at the time of examination that the Roads Inventory was availed for verification by the OAG, hence the matter is resolved.

18. Unsupported Payables

415. The statement of financial position reflects payables balance of Kshs.49,006,015,000 as disclosed at Note 24 to the financial statements which includes current payables from exchange transactions balance of Kshs.41,020,863,000 and non-current payables from exchange transactions balance of 7,985,152,000. However, payables schedule was not provided for audit purposes.

416. Further, the following variances in payables were noted between the financial statements balances and the respective ledgers balance:

Item Details	Financial Statement Balance Kshs	Ledger Balance Kshs	Variance Kshs
Due to Contractors			
Trade Creditors	38,277,691,914	10,306,481,017	27,971,210,897
Equalization Fund HQ	450,487,885	231,249,383	219,238,502
Other Trade Payables-General			
Performance Security Bonds	2,028,000	1,250,000	778,000
Trade creditors	2,036,897,598	928,466,654	1,108,430,944

CRC Payables	8,649,245	8,431,314	217,931
Other payables			
PAYE	676,867	2,391	674,476
NHIF	844,660	19,700	824,960
NSSF	792,964	56,644	736,320
Payroll control	5,936,955	637,341	5,299,614
Withholding tax (VAT)	17,530,669	1,458,142	16,072,527
Withholding income tax	17,851,288	48,183	17,803,105
Other deductions	5,165,948	2,183,764	2,982,184
Staff insurance	63,385,000	35,730,000	27,655,000
Staff creditors	131,000	3,099,023	-2,968,023
Non-Current Payables			
Contract retention	7,985,152,000	739,369,623	7,245,782,377
Total	48,873,221,993	12,258,483,179	36,614,738,814

417. In the circumstances, the accuracy and validity of payables balance of Kshs.49,006,015,000 could not be confirmed.

Management Response

418. The Accounting Officer submitted that the payables schedules had been provided to the auditor for review. The variances relate to the opening balances for the various payable ledgers which was not taken in account as part of the balances.

Committee Recommendation

419. The Committee directs that within three (3) months upon adoption of this report, the Accounting Officer to submit a report on the reconciliation of the variances to the OAG for verification.

19. Budgetary Control and Performance

420. The statement of comparison of budget and actual amounts reflects actual expenditure amount of Kshs.63,677,934,000 against final expenditure budget of Kshs.81,004,390,000 resulting in an under-expenditure of Kshs.17,326,456 or 21% of the budget. Further, it was noted that the capital expenditure was not included in the budget. In addition, approvals for the over expenditure in respect of road

works cost – maintenance and employment costs of Kshs.156,998,000 and 17,835,000 respectively were not provided.

421. The under expenditure affected the planned activities and may have impacted negatively on road infrastructure delivery to the public.

Management Response

422. The Accounting Officer submitted as follows—
1. The under expenditure was as a result of funds received at the end of the financial year and did not have any negative impact on road infrastructure delivery to the public.
 2. The capital expenditure has been included in the budget as a transfer to the GOK development fund because they are not revenue in nature.
 3. The over expenditure in respect of road works cost – maintenance and employment costs of Kshs. 156,998,000 and 17,835,000 respectively is as a result of rolls-over road works committed and already funded from the previous financial year and executes them in the current Financial year.

Committee observation

423. The Committee observed from the explanation and documents submitted by the Accounting Officer at the time of examination that delayed disbursement of the budget allocations attributed to its under expenditure and over expenditure; hence, the matter is resolved.

20.Failure To Adhere to a Third Gender Rule

424. An analysis of the staff bio data provided for audit revealed that out of seven hundred and forty-eight (748) staff, there were five hundred and twenty-five (525) male and two hundred and twenty-three (223) female. The number of women were therefore below a third of the total number of staff contrary to the requirements of Article 27 (8) of the Constitution which stipulates that not more than two thirds of the members shall be of the same gender.

425. Management was in breach of the law.

Management Response

426. The failure to adhere to a Third Gender Rule is a legacy issue and the Authority continues to work towards compliance of the 1/3 gender rule in its operations, appointments and training.

Committee Observations

427. The Committee observed that the management of KeRRA was continuously working towards complying with the Third Gender Rule.
428. The Committee also noted the need for the Authority to continue ensuring both gender and regional balance pursuant to Article 27(8) of the Constitution of Kenya, 2010.
429. Further, the Committee noted that the documentary evidence submitted by the Accounting Officer was satisfactory.
430. The Committee observed that since the management has continuously worked towards complying with Article 27(8) on a third gender rule in operations, appointments and training, the matter is resolved.

21. Violation Of a Third Rule of Basic Pay

431. An analysis of the payroll for the month of April, 2022 revealed that 45 employees had net salary way below a third of their basic pay which is contrary to the Authority's Human Resource Policy and Procedures Manual. This exposes staff to pecuniary embarrassment.
432. Management did not comply to the entity's Human Resource Policy and Procedures manual.

Management Response

433. The Accounting Officer informed the Committee that the Human Resource department had communicated to the affected staff to comply with the one third basic pay rule. The number had reduced from 45 to 24 as at 30th June 2023.

Committee Observation

434. The Committee observed at the time of examination that the Authority was gradually complying with the a Third-rule of basic pay and the number of affected staff had reduced from 45 to 24.

Committee Recommendation

435. The Committee directs the Accounting Officer to expedite the process to ensure that all staff are compliant with a third basic rule as stipulated in section 19(3) of the Employment Act, Cap 226.

22. Stalled And Incomplete Projects

22.1. Delayed Completion of Projects

436. Review of projects records provided revealed that in the financial year under audit, a total of thirty-one (31) new contracts were awarded on different dates, with total contract cost of Kshs.46,715,868,748. Further, there were 91 projects awarded between April, 2016 and September, 2020 with a total contract cost of Kshs. 180,656,714,960 of which advance payments totaling to Kshs. 16,198,531,681 had been paid as at 30 June, 2022. However, the projects remain incomplete mostly due to delay in payments.

437. Value for money for the incomplete projects could not be confirmed.

Management Response.

438. The Accounting Officer submitted that the authority had projects which remained incomplete mostly due to delay in payments. The Authority continues to experience challenges funding development projects due to inadequate budgetary allocation and delayed exchequer releases. This had greatly impacted the progress of these projects.

Committee Observation

439. The Committee observed from the explanation of the Accounting Officer at the time of examination that pending bills significantly impacted the ongoing and planned infrastructural projects in the road sector, thus an increase in stalled projects.

Committee Recommendation

440. The Committee recommends that the Accounting Officer should prioritize completing the pending projects before embarking on any new projects.

441. Further, that within three (3) months upon adoption of this report, the Accounting Officer should expedite the engagements with the National Treasury in order to obtain a way forward on the pending projects and submit a status report on the utilization of the securitization of the fuel levy in paying pending bills and interests.

22.2. Ting'a – Igena – Itambe Road (Nyamira County)

442. Records provided for the above project revealed that the road was financed through the GoK Road Maintenance Fund and was in the work plan for financial year 2021/2022 at a budgeted of Kshs.17,500,000.
443. The tender was advertised through the standard newspaper on 25 January, 2022 and in the Authority's website, under preference and reservation for women. Minutes of tender opening meeting dated 23 February, 2022 shows that twenty-three (23) bidders responded. According to tender evaluation minutes dated 22 April, 2022 an engineering company was found to be the lowest evaluated responsive bidder and professional opinion issued on 22 April, 2022 recommending approval of the recommendation of the evaluation report. On 27 May, 2022, notification of intention to enter into a contract was issued.
444. The contract was awarded to the Company on 22 June, 2022 thereafter accepted on 27 June, 2022 and the contract signed on 28 July, 2022. On 2 August, 2022 commencement letter was issued by the Authority and site possession order given on 3 August, 2022. The contract was to take a period of six (6) months with a defect liability of three (3) months.
445. According to progress report dated 11 October, 2022, the project was 100% complete and payment made on 7 December, 2022 through I Banking vide payment voucher number PV:40449 of gross amount Kshs. 14,202,436. The contractor is yet to be paid retention amount of Kshs.727,876.
446. Further, Management did not provide the Inspection and Acceptance Committee report an indication that the works were not inspected and accepted before payment was effected. It was also noted that handing over of the road to Authority had not been done and the completion certificate had not been issued as at the time of the audit in February, 2023.

Physical Verification

Verifiable Roadworks done revealed:

Details	Audit Verification
Road length	7.3Km
Tarmac section in the market	0.4Km
Road works done	6.9Km
Road width	7meters
signage	Not done
Culvert Installation 900mm	8 Cross Culvert
Culvert Installation 600mm	9 Access Culvert
Stone Pitching	Done
Provide and Place Gabion Installation	Not done and not paid for
Provide and place Rock fill to Gabion	Not done and not paid for
Heavy grading	Notable
Provide gravel wearing course-excavation spread, water and compact gravel to specifications	Notable

447. The works were therefore, not fully complete and the outstanding retention amount of Kshs.727,876 may not be able to cover for the costs.

448. In the circumstances, value for money on amounts spent on the project could not be confirmed.

Management Response

449. The Accounting Officer submitted and clarified as follows—

- i) Retention money is used to address any defects during the Defects Liability Period and can only be refunded as per the contract agreement. The funds have not been refunded.
- ii) Handing over and completion certificate are only issued after substantial inspection or end of Defects Liability Period.
- iii) Certificate paid for the project was an Interim Payment Certificate. Inspection and acceptance report are done after a substantial completion of the road.

Committee observations

450. The Committee noted that physical verification happened when the terms of the contract had already been performed.
451. The Committee observed that the Authority had paid part of the outstanding retention amount and had a balance of Kshs.3,297,564 pending until the hand over is done.
452. The Committee observed that at the time of examination, the inspection report was not provided, nor was any evidence submitted to confirm that an inspection committee had been constituted.

Committee Recommendation

453. The Committee recommends that within three (3) months upon adoption of this report, the Accounting Officer to submit the inspection report to the Office of the OAG.

23. Lack Of an Annual Training Plan

454. Included in the employment costs amount of Kshs.2,821,451,000 is an amount of Kshs.183,945,000 incurred under training and development in the year under review. It was noted that during the year under review, employees were sponsored for various training by the Authority. However, the Authority did provide an approved annual training plan to justify the expenditure.

Management Response

455. The Accounting Officer submitted that the Authority carried out Skills Gap Training and Needs analysis, from which it draws heavily on its training directions in terms of enhancing and equipping the staff. The Authority henceforth endeavors to ensure that the training plan is prepared on time. With the ERP through the employee self-service portal the staff are able to share their training requests on time and enable the committee deliberate and onward submissions to the Director General for approval.

Committee Observation

456. The Committee observed from the submission of the Accounting Officer at the time of examination that the Authority had in place an ERP self-service portal system where staff project their training requests, which enables the Authority to approve the training plan on time, hence the matter is resolved.

24. Lack of an Updated Fixed Asset Register

457. Management did not maintain an updated fixed asset register as at 30 June, 2022, as required by Section 143 (1) of the Public Finance Management Act (National Government) which states that the Accounting Officer shall be responsible for maintaining a register of assets under his or her control or possession.
458. In the circumstances, Authority's assets may not be fully accounted for and maybe at risk of loss.

Management Response

459. The Accounting Officer submitted that the Authority Asset register captures of all basic information regarding a particular asset a per asset category. The Authority continues to implement its ERP system, and the Asset Module has been upgraded to comply with statutory requirements.

Committee Observation

460. The Committee observed from the explanation of the Accounting Officer at the time of examination that the attached fixed asset register was updated and verified by the OAG, hence the matter is resolved.

25. Unsupported Reversals in the Ledgers

461. A review of the ledgers provided shows that a total of 1,147 transactions reversals were effected during the period under review. However, there were no documentation provided showing approval of the reversals.
462. Under the circumstances, the entity is exposed to unauthorized transactions, which could affect the accuracy of the financial statements.

Management Response

463. The Accounting Officer informed the Committee that the Authority had incorporated workflows for error correction entries in the ERP system and now have provision for preparer, approver and attachment of documents in ERP.

Committee Observation

464. The Committee observed at the time of examination that the Authority had incorporated workflows for error correction entries in the ERP system and currently

have provision for preparer, approver and attachment of documents in the ERP, hence the matter is resolved.

3.3 LAPSSET CORRIDOR DEVELOPMENT AUTHORITY

465. The management of LAPSSET, led by the Director General Mr. Stephen Ikua appeared before the Committee to adduce evidence on the audit queries that had been raised by the Auditor General for the FY 2018/19 to FY 2021/22.

FINANCIAL YEAR 2018/2019

466. The Auditor General gave a qualified audit opinion and raised the following concerns:

1. Non-Valuation of Land

467. The statement of financial position reflects a balance of Kshs.13,033,226 in respect of property, plant and equipment. However, the balance excludes Land Ref: Title No. CR.68910 measuring 28,140 hectares whose value had not been determined.

Management Response

468. The Accounting Officer submitted that the value of land had been incorporated into the Authority's financial records, following the completion of the excision and the subsequent finalization of the land valuation.

Committee Observation

469. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had undertaken a valuation of the land and included it in the financial statement for the year 2021/2022, which was verified by the OAG.

470. The Committee observes that, since the accounting officer submitted the valuation report, the matter is resolved.

2. Lack of a Risk Management Policy

471. The Authority had not developed a documented Risk Management Policy. The Authority had therefore not developed risk management strategies, which include fraud prevention mechanism and a system of risk management and

internal controls that builds robust business operations as required under Regulation 165(1) of the Public Finance Management (National Governments) Regulations, 2015.

Management Response

472. The Accounting Officer stated that while the Authority did not have a documented Risk Management Policy during the audit period, risk-related matters were being addressed through internal controls and management oversight. Nonetheless a formal Risk Management policy had since been developed and adopted.

Committee Observation

473. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had developed and approved a Risk Management Policy that was operational, hence the matter is resolved.

3. Staff Establishment

474. The Staff Establishment of the Authority provides for one hundred and thirty (130) members of staff in various cadres and job groups. However, during the financial year 2018/2019, the Authority had forty-one (41) members of staff. Further, although each Department was supposed to be headed by a Manager, most of the Departments were headed by Assistant Managers in acting capacities. In addition, available information indicated that the Authority advertised for nineteen (19) positions on 30 January, 2018. However, only one position for Regional Manager, Lamu was filled despite interviews having been conducted for all the positions.

Management Response

475. The Accounting Officer submitted that the Authority had an approved establishment of 130 staff positions. As of the time Audit, only 45 positions had been filled, and the Authority had not fully staffed its human resource complement due to financial constraints. However, some of these constraints have since been addressed.

Committee Observation

476. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management did not refute the fact that most positions were still vacant and that despite interviews being done for nineteen positions, only one position was filled and eighteen were still vacant.
477. The Committee further observed that although the management stated that there were budgetary constraints affecting recruitment of officers, no sufficient explanation was availed by the management as to why the eighteen positions were not filled despite an interview being undertaken.
478. The Committee observes that since in the subsequent year the vacant positions were filled, the matter is resolved.

FINANCIAL YEAR 2019/2020

479. The Auditor General gave a qualified audit opinion and raised the following concerns:

4. Property, Plant and Equipment

4.1. Non-Valuation of Land

480. The statement of financial position reflects a balance of Kshs.13,033,226 in respect of property, plant and equipment. However, the balance excludes Land Ref: Title No. CR.68910 measuring 28,140 hectares whose value had not been determined.

Management Response

481. The Accounting Officer submitted that the value of land had been incorporated into the Authority's financial records, following the completion of the excision and the subsequent finalization of the land valuation.

Committee Observation

482. The Committee noted from the explanation of the Accounting Officer at the time of examination that the management had undertaken a valuation of the land and included it in the financial statement for the year 2021/2022, which was verified by the OAG'.
483. The Committee observes that since the Accounting Officer submitted the valuation report, the matter is resolved.

4.2. Land Ownership and Unregistered Leases

484. Examination of the land documents revealed the following anomalies;
- a) The land title deed for one parcel of land was in the name LAPSET instead of LAPSSET Corridor Development Authority (LCDA).
 - b) Leases for Regional Offices in Isiolo, Garissa and Lodwar, had not been registered with the Ministry of Lands and Physical Planning within the two months' compulsory period as required by Section 4(vi) of the Registration of Documents Act, 2010.

Management Response

485. The Accounting Officer informed the Committee that the Authority had engaged the National Land Commission (NLC) and the Ministry of Lands, Physical Planning and Housing to rectify this. The correction had been made, and all official records now reflect the accurate spelling.
486. The Authority had finalized the lease registration for all regional office spaces, and normal operations were fully in place.

Committee Observation

487. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had rectified the anomaly and the title deed had the correct name, and further the leases for Garissa, Lodwar and Isiolo were available, hence the matter is resolved.

5. Unsupported Board Expenses

488. Examination of records indicated that a Board Member was paid a total of Kshs.520,800 in respect of sitting allowances, and travel and accommodation allowances while attending Board meetings. However, supporting documents including airplane boarding passes and Board Attendance Register in support of the payments were not provided for audit review.

Management Response

489. The Accounting Officer submitted on the payment in allowances to a Board member, confirming that the LCDA Board held meetings outside its registered office locations—such as in Naivasha and Lamu—strictly upon invitation by State Corporations and other relevant institutions. These engagements included

induction and training workshops, as well as stakeholder consultation meetings, which are consistent with the official duties outlined under SCAC guidelines.

Committee Observation

490. The Committee observed from the explanation of the Accounting Officer at the time of examination that the Accounting Officer provided evidence of documents including the attendance register for the conference attended.
491. Additionally, the Authority further submitted documentations detailing however the breakdown of the Kshs. 520, 800 was expended by the Board member.
492. The Committee observes that since documentation on attendance and the breakdown of the money spent was submitted, the matter is resolved.

6. Budgetary Control and Performance

493. The statement of comparison of budget and actual amounts reflects a final expenditure budget and actual expenditure on comparable basis of Kshs.381,394,653 and Kshs.331,291,416 respectively resulting to an under expenditure of Kshs.50,103,237 or 13%.

Management Response

494. The Accounting Office submitted that LAPSET had budgeted for receipts totaling Kshs.381,394,653, while the actual expenditure amounted to Kshs.331,291,416. The resulting under-expenditure was primarily due to two factors; Ongoing Procurement Processes and Closure of Training Institutions due to Covid.
495. The Authority was certain that it remains committed to prudent financial management and ensuring that all allocated funds are utilized effectively in line with the intended objectives.

Committee Observation

496. The Committee noted that the explanation by the Accounting Officer regarding the cause of the under-expenditure was satisfactory and observes that the matter is resolved.

7. Board Meetings Held Outside Registered Offices

497. The Authority held Board meetings outside the registered offices with some held in Naivasha and Lamu. This is contrary to Section 8(1)(c) of the State

Corporations Act which states that no meeting of a Board should be held at any place other than the registered or principal office of the state corporation.

Management Response

498. The Accounting Officer submitted on the payment in allowances to a Board member, confirming that the LCDA Board held meetings outside its registered office locations—such as in Naivasha and Lamu—strictly upon invitation by State Corporations and other relevant institutions. These engagements included induction and training workshops, as well as stakeholder consultation meetings, which are consistent with the official duties outlined under SCAC guidelines.

Committee Observation

499. The Committee observed from the explanation of the Accounting Officer at the time of examination that the Authority submitted additional evidence of an email excerpt from State Corporations Advisory Committee (SCAC) inviting members of the Board for a "Mwongozo Induction Forum".

500. Further, the Committee noted that it was SCAC which convened the induction forum and invited members of the Board of State Corporations as participants hence negating the requirement for approval from the same body (SCAC).

501. The Committee having confirmed that it was SCAC that invited members of the Board for the induction meeting, observes that the matter is resolved.

8. Irregular Recruitment of Staff

502. The statement of financial performance reflected an amount of Kshs.3,648,966 paid to thirty-seven (37) newly recruited members of staff. Review of the recruitment process revealed that the vacancies were advertised internally on 2 June, 2020 with a deadline for the application set for 5 June, 2020. Although records indicated that the Authority had issued appointment letters to the new staff by 10 June, 2020, evidence indicating that due recruitment process was followed including needs assessment, interview and scoring criteria were not provided for audit review.

Management Response

503. The Accounting Officer submitted that the Authority adhered to all established procedures and approvals during the recruitment process, including:

1. Prioritization of recruitment as a strategic response to longstanding understaffing;

2. Obtaining Board and SCAC approvals in line with public sector recruitment guidelines;
 3. Observance of the Human Resource Manual provisions prioritizing internal candidates;
 4. Transparent internal advertising and suitability assessments conducted by a qualified committee;
 5. Selection based on merit, performance history, and institutional needs.
504. The current approved staff establishment for the Authority stands at 249 positions. However, the number of staffs currently in post are 154.

Committee Observation

505. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had sought approvals from the Head of Public Service, the Public Service Commission and the Board for the recruitment.
506. The Committee observes that since the management has sought the approvals to recruit, the matter is resolved.

9. Unapproved Policy Documents

507. During the year under review, most of the Authority's policy documents including Internal Controls Manuals, Accounts Manual, ICT Policy and Human Resource Manuals were in draft form. The documents have been in draft form since 2013. The Authority may not, therefore, have maintained an effective system of internal controls as required under Regulation 23(1)(c) of the Public Finance Management (National Government) Regulations, 2015.

Committee Observation

508. The Committee observed that the Accounting Officer did not provide a response on this query. Therefore, the matter is unresolved.

FINANCIAL YEAR 2020/21

10. Inaccuracy In Cash and Cash Equivalents

509. The bank reconciliation statements provided for audit review reflected un-presented cheques of Kshs. 722,486 which included stale cheques of Kshs. 220,296 which were not reversed in the cashbook, as at 30 June, 2021 hence understating the cash and cash equivalents.

510. Further, the bank reconciliation statement reflected unrepresented cheques of Kshs. 237,888, relating to payments made to KRA, which has been outstanding for a period of more than one year. It was not clear why these cheques had not been reversed in the cash book.

Management Response

511. The Accounting Officer submitted that the stale cheques had been reversed in the cashbook.

Committee Observation

512. The Committee observed from the explanation of the Accounting Officer at the time of examination that stale cheques had been reversed in the cash book and the OAG had adjusted on the same in subsequent years.

513. The Committee observes that since the stale cheques had been reversed, the matter is resolved.

11. Undisclosed Material Uncertainty Relating To Sustainability Of Services

514. The statement of financial performance reflects a deficit for the year under review of Kshs. 81,141,148 resulting in accumulated deficit of Kshs. 14,263,513 (2022: Accumulated Surplus – Kshs. 66,877,636). In addition, the current liabilities balance of Kshs. 60,963,089 exceeded the current assets of Kshs. 5,259,639 resulting to a negative working capital of Kshs. 55,703,450 as at 30 June, 2021. The precarious financial performance and position is an indication of existence of a material uncertainty which may cast a significant doubt on the Authority's ability to meet its obligations as and when they fall due. The financial statements have been prepared on a sustainability of services basis on the assumptions that the Authority will continue to receive financial support from the National Government and creditors.

Management Response

515. The Accounting Officer stated that the negative working capital was occasioned by budget cuts. However, the Authority has experienced a steadfast growth in budget over the last three years.

Committee Observation

516. The Committee observed from the explanation of the Accounting Officer at the time of examination that although the Accounting Officer stated that the

Authority had gazetted their land as a special economic zone and were exploring introduction of LAPSET development levy, the Authority's sustainability plan was questionable.

Committee Recommendation

517. The Committee recommends that within three (3) months upon the adoption of this report, the Accounting Officer should submit a report detailing how they plan to redefine their future role in terms of sustainability to the OAG and the Parliament.

12. Failure To Withhold Tax on Behalf of a Consultant

518. The statement of financial performance reflects use of goods and services, the balance includes an amount of Kshs. 10,598,000 paid to a consultancy firm in respect to a contract. However, Kshs. 2,672,883 for withholding tax to Kenya Revenue Authority was not deducted. This was contrary to provisions of The National Treasury Circular No. 15/2019 dated 11 December, 2019.

Management Response

519. The payment was made directly to the consultant due to delays in the contract regularization process. The contract has now been fully regularized, and as a result, the withholding tax have been duly remitted to the Kenya Revenue Authority (KRA) in compliance with statutory requirements.

Committee Observation

520. The Committee observed that the payments were made to the consultant and the contract was regularized hence the matter is resolved.

13. Irregular Recruitment of Members of Staff

521. The statement of financial performance reflected an amount of Kshs.3,648,966 paid to thirty-seven (37) newly recruited members of staff. Review of the recruitment process revealed that the vacancies were advertised internally on 2 June, 2020 with a deadline for the application set for 5 June, 2020. Although records indicated that the Authority had issued appointment letters to the new staff by 10 June, 2020, evidence indicating that due recruitment process was followed including needs assessment, interview and scoring criteria were not provided for audit review.

Management Response

522. The Accounting Officer submitted that the Authority adhered to all established procedures and approvals during the recruitment process, including:
1. Prioritization of recruitment as a strategic response to longstanding understaffing;
 2. Obtaining Board and SCAC approvals in line with public sector recruitment guidelines;
 3. Observance of the Human Resource Manual provisions prioritizing internal candidates;
 4. Transparent internal advertising and suitability assessments conducted by a qualified committee;
 5. Selection based on merit, performance history, and institutional needs.
523. The current approved staff establishment for the Authority stands at 249 positions. However, the number of staffs currently in post are 154.

Committee Observation

524. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had sought approvals from the Head of Public Service, the Public Service Commission and the Board for the recruitment.
525. The Committee observes that since the management had sought approvals to recruit, the matter is resolved.

14. Irregular Board Expenses

526. Examination of records indicated that a Board Member was paid a total of Kshs.520,800 in respect of sitting allowances, and travel and accommodation allowances while attending Board meetings. However, supporting documents including airplane boarding passes and Board Attendance Register in support of the payments were not provided for audit review.

Management Response

527. The Accounting Officer submitted on the payment in allowances to a Board member, confirming that the LCDA Board held meetings outside its registered office locations—such as in Naivasha and Lamu—strictly upon invitation by State Corporations and other relevant institutions. These engagements included induction and training workshops, as well as stakeholder consultation meetings, which are consistent with the official duties outlined under SCAC guidelines.

Committee Observations

528. The Committee observed from the explanation of the Accounting Officer at the time of examination that the Accounting Officer submitted documents including the attendance register for the conference attended.
529. Additionally, the Authority further submitted documentations, however the breakdown of the Kshs. 520, 800 was expended by the Board member.
530. The Committee observes that since evidence of attendance and breakdown of expenditure was availed that the matter is resolved.

15. Unapproved Expenditure

531. The statement of comparison of budget and actual amounts reflects over-expenditure of Kshs. 9,484,102 or 80% of the approved budget under two expenditure items, as detailed on the table below:

S/No	Item	Final Budget (Kshs)	Actual Expenditure (Kshs)	Variance (Kshs)	Variance %
1	Board Expense	10,850,000	19,670,621	(8,820,621)	81
2	Repairs and Maintenance	1,000,000	1,663,481	(663,481)	66
		11,850,000	21,334,102	(9,484,102)	80

532. However, there was no evidence of approval for the excess expenditure of Kshs. 9,484,102 on the two items. This is contrary to Section 44(2) of the Public Finance Management (National Government) Regulations, 2015 which states that National Government entities shall execute their approved budgets based in the annual appropriations, and the approved annual cash flow plan with exception of unforeseen and unavoidable spending dealt with through the Contingencies Fund, or Supplementary estimates. In the circumstances, Management was in breach of the law.

Management Response

533. The Accounting Officer submitted that the over-expenditure was necessitated by increased Board activities in planning and coordination of operationalization of the first berth of Lamu Port.

534. Further, Repairs and maintenance were occasioned by ageing in assets, which required more frequent and costly interventions than initially projected.
535. The reallocation was formally approved by the Board of Directors and proof of approval submitted.

Committee Observation

536. The Committee observed that the submission and evidence availed by the Accounting Officer on the reasons for the over expenditure were satisfactory and observes that the matter is resolved.

FINANCIAL YEAR 2021/22

16. Material Uncertainty Relating to Sustainability of Services

537. The statement of financial performance reflects a deficit for the year under review of Kshs. 81,141,148 resulting in accumulated deficit of Kshs. 14,263,513 (2022: Accumulated Surplus – Kshs. 66,877,636). In addition, the current liabilities balance of Kshs. 60,963,089 exceeded the current assets of Kshs. 5,259,639 resulting to a negative working capital of Kshs. 55,703,450 as at 30 June, 2021. The precarious financial performance and position is an indication of existence of a material uncertainty which may cast a significant doubt on the Authority's ability to meet its obligations as and when they fall due. The financial statements have been prepared on a sustainability of services basis on the assumptions that the Authority will continue to receive financial support from the National Government and creditors.

Management Response

538. The Accounting Officer stated that the negative working capital was occasioned by budget cuts, however, the Authority has experienced a steadfast growth in budget over the last three years.

Committee Observation

539. The Committee observed from the explanation of the Accounting Officer at the time of examination that although the Accounting Officer stated that the Authority had gazetted their land as a special economic zone and were exploring introduction of LAPSSET development levy, the authority's sustainability plan was questionable.

Committee Recommendation

540. The Committee recommends that within three (3) months upon adoption of this report, the Accounting Officer should submit a report detailing how they plan to redefine their future role in terms of sustainability to the OAG and the Parliament.

17. Budgetary Control and Performance

541. The statement of comparison of budget and actual amounts reflects a final expenditure budget and actual expenditure on comparable basis of Kshs.381,394,653 and Kshs.331,291,416 respectively resulting to an under expenditure of Kshs.50,103,237 or 13%.

Management Response

542. The Accounting Office submitted that LAPSSET had budgeted for receipts totaling Kshs.381,394,653, while the actual expenditure amounted to Kshs.331,291,416. The resulting under-expenditure was primarily due to two factors; Ongoing Procurement Processes and Closure of Training Institutions due to Covid.
543. The Authority was certain that it remains committed to prudent financial management and ensuring that all allocated funds are utilized effectively in line with the intended objectives.

Committee Observation

544. The Committee observed from the explanation of the Accounting Officer at the time of examination that the explanation by the Accounting Officer on the causes of the under- expenditure was satisfactory and observes that the matter is resolved.

18. Failure To Conduct Governance Audit

545. The Authority was not subjected to an annual governance audit as required by the Mwongozo – Code of Governance. This is contrary to Practice 1.13(1) of the Mwongozo: Code of Governance which stipulates that the board in consultation with the oversight office, should ensure that it subjects the organization to an annual governance audit by a member regulated by the Institution of Certified Public Secretaries of Kenya (ICPSK) and accredited for that purpose.

Committee Observation

546. The Committee observed from the explanation of the Accounting Officer at the time of examination that the governance audit ought to be conducted by the OAG, given that the office of the Auditor General is the office primarily mandated to carry out audit processes; hence, the matter is resolved.

3.4 KENYA PORTS AUTHORITY (KPA)

THE AUDITOR GENERAL'S REPORT FOR THE FINANCIAL YEAR 2019/2020 AND 2020/2021

Overview of the State Corporation

547. The Kenya Revenue Authority is a state corporation under the National Treasury and Economic Planning charged with collecting revenue on behalf of the government of Kenya.

548. Parliament had examined the audit reports of KPA up to FY 2018/19.

FINANCIAL YEAR 2019/20

549. The Auditor General gave a qualified opinion and raised the following concerns;

1. Operating Revenue

550. As disclosed in Note 6 to the financial statements, the statement of profit or loss and other comprehensive income reflects operating revenue of Kshs.48,161,579,000. The following unsatisfactory observations were made:

1.1. Under-Charging of Revenue from Storage of Containers

551. The balance of Kshs.48,161,579,000 includes revenue arising from storage of empty containers of Kshs.561,383,000 and storage of full containers of Kshs.5,612,671,000, all totaling to Kshs.6,174,054,000. This amount is net of waiver on storage of Kshs.242,268,925. Examination of documents indicated that the waivers were granted on condition that the cargo would be cleared within seven (7) days after the waiver was granted, failure to which the storage fees would be secured in full. However, the cargo that had not been cleared within the seven days had accumulated storage fees of Kshs.242,268,925 which were not secured by the Management. Further, storage waiver amounting to Kshs.24,885,400 was

granted to customers on grounds of financial challenges. Management has not provided supporting documents or explanations on how the amount was computed. Consequently, the accuracy and completeness of storage revenue of Kshs.6,174,054,000 and validity of waiver on storage of Kshs.242,268,295 for the year ended 30 June, 2020 could not be confirmed.

Management response

552. The management stated that the waiver involves a step-by-step analysis.

CASE A

A Waiver of storage charges granted to the Ministry of Devolution and Arid and Semi-Arid Lands

A.1 Introduction

553. The subject file relates to storage charges for a consignment of an 80 x 20ft container of rice donation from the Government of the People's Republic of China to the Government of the Republic of Kenya. This matter had two facets: the first was storage charges for inbound fully laden containers and the second was storage for outbound empty containers. The inbound containers incurred storage at the Inland Container Depot (ICD) Embakasi, as a result of delayed clearance by the Ministry of Devolution. The ministry cleared their consignment after **16** days by stripping the cargo out of the containers while still at the ICD Embakasi and leaving behind the empty containers for railage to Mombasa. When the empty containers were railed to Mombasa, they were abandoned at the Port Reitz yard thereby attracting storage for **14 days** while awaiting repatriation. The ministry requested a waiver of storage charges in both cases and was granted accordingly. The queried item was the storage charges for 80 x 20ft empty containers.

A.2 Waiver handling process

554. To fully appreciate the waiver handling process, it is important to explain the various steps from end to end. The first step is the application for waiver by the customer. Customers seeking waiver of storage charges are required to submit their requests either online through a specified email address or through hard copies that may be delivered to the Authority.

555. The second step is evaluation of the applications received by the Waiver Committee. The Committee performs this task by assessing the merits of an application guided by the Waiver Policy.

556. Where the amount of waiver granted is beyond a given threshold (above Kshs. 1,000,000), the Committee's recommendations are escalated through an internal memo to the Managing Director for approval. This is the third step.

557. Upon securing Management's approval, the customer is given feedback accordingly. This is the fourth step in which the decision made is communicated vide a letter addressed to the customer and copied to Manager Financial Accounting for processing of credit notes. This letter advises the customer to clear their consignments within seven days from the date of issue.

558. If the customer is unable to evacuate their cargo within the specified period, the customer has an opportunity to seek revalidation which is a process that gives a new lease of life to the expired waiver letter. This is the fifth step. Once revalidated, the customer is given feedback accordingly and proceeds to evacuate their cargo.

559. The sixth and last step is approval by the Board of Directors. This is done on a quarterly basis where Management prepares appropriate memo to the Board for ratification. The Board's resolutions on such cases are communicated back to Management for appropriate action and guidance.

A.3 Step by step analysis of the Ministry of Devolution's case

560. The table below addresses the queried item by providing a step-by-step analysis of the various phases of the waiver handling process from application stage to Board's approval.

S/No.	Subject matter at different stages	Document type
1	Application for waiver of storage charges for 80 x20ft fully laden containers said to contain rice.	Letter from the consignee (Ministry of Devolution and ASAL) dated 4 th December 2019 Ref. NT/GCA/OPS/4/001/VOL. II (083)

S/No.	Subject matter at different stages	Document type
2	Waiver Committee deliberation	Memo dated 10 th December 2019 Ref. COMM/2/2/07/1735/2019. The Committee recommended 100 % waiver as this consignment was a Government-to-Government donation in line with clause 4.1.15 of the Waiver Policy 2018.
3	Management approval	Memo dated 11 th December 2019 Ref. COMM/2/2/07/1735/2019. Approval granted by the MD on 16 th December 2019
4	Feedback given to the client	Letter dated 16 th December 2019 Ref. COMM/2/2/07/1735/2019
5	Request for revalidation	Letter dated 25 th February 2020 Ref. NT/GCA/OPS/4/001/VOL. II (092)
6	Feedback to the client	Letter dated 27 th February 2020 Ref. COMM/2/2/07/1735/2019
7	Application for waiver storage charges for 80 x20ft empty containers.	Letter dated 6 th July 2020 Ref. NT/GCA/OPS/4/001/VOL. II (103)
8	Waiver Committee deliberation	Memo dated 14 July 2020 Ref. COMM/2/2/07/1735/2019 (online Meeting done 14 th July 2020)
9	Management approval	Memo dated 15 th July 2020 Ref. COMM/2/2/07/1735/2019. Approval granted by the MD on 15 th July 2020 (online platform)
10	Feedback given to the client	Letter dated 16 th July 2020 Ref. COMM/2/2/07/1735/2019
11	Request for revalidation	Email dated 23 rd July 2020

S/No.	Subject matter at different stages	Document type
12	Feedback to the client	Letter dated 23 rd July 2020 Ref. COMM/2/2/07/1735/2019
13	Board approval	Board Resolution - 370 th Regular Board meeting 30 January 2020 - 112 th Finance and Asset Committee meeting

B.0 Waiver of storage charges granted to Selenkei Investments Limited

B.1 Introduction

561. The subject file relates to storage charges for a consignment of 92 x 40ft containers said to contain solar power equipment for Selenkei Investment Limited. Selenkei Investment Limited is a private company incorporated in Kenya in 2011. At the time of handling their waiver request, the company had a Power Purchase Agreement with the Government of Kenya to supply electricity to the Kenya Power and Lighting Company.

B.2 Waiver handling process

562. The waiver handling process is the same as explained in the previous case.

B.3 Step by step analysis of the Selenkei Investments Limited's case

563. The table below addresses the queried item by providing a step-by-step analysis of the various phases of the waiver handling process from application stage to Board's approval.

S/No.	Subject matter at different stages	Document type
1	Application for waiver (92x40ft containers said to contain materials for	Letter from the consignee (Selenkei Investments Limited) dated 27 th November 2019; received at KPA on 28 th November 2019.

S/No.	Subject matter at different stages	Document type
	a solar power project)	
2	Waiver Committee deliberation	Memos dated 4 th December 2019 Ref. COMM/2/2/07/1731/2019 marked A to M. The Committee recommended 80 % waiver in line with clause 4.1.14 of the Waiver Policy 2018. The consignment was for a solar power generation project in support of government agenda.
3	Management approval	Memo dated 6 th December 2019 Ref. COMM/2/2/07/1731/2019. Approval granted by the MD on 9 th December 2019
4	Feedback given to the client	Letter dated 10 th December 2019 Ref. COMM/2/2/07/1731/2019
5	Request for revalidation	Letter from the consignee (Selenkei Investments Limited) dated 23 rd December 2019; received at KPA on 23 rd December 2019.
6	Feedback to the client	Letter dated 24 th December 2019 Ref. COMM/2/2/07/1731/2019
7	Request for revalidation	Email dated 13 th February 2020 seeking revalidation of waiver of storage for 4 x 40ft containers that were pending evacuation with attached Letter.
8	Feedback given to the client	Letter dated 21 st February 2020 Ref. COMM/2/2/07/1731/2019
9	Board approval	Board Resolution- 370 th Regular Board meeting 30 January 2020

S/No.	Subject matter at different stages	Document type
		- 112 th Finance and Asset Committee meeting

564. Therefore, due diligence was done in awarding the waivers and storage revenue of Kshs 6,174,054,000 for the year ended 30 June 2020 was fairly stated.

Committee observation

565. The Committee observed from the explanation of the Accounting Officer at the time of examination that the Accounting Officer submitted the Board and Ministry of Devolution approval to grant the waivers on storage charges.

566. The Committee observed that since the Authority obtained the official approvals to grant the waivers on storage charges, the matter stands resolved.

1.2. Un-Confirmed Licenses Revenue

567. Note 6 to the financial statements shows licenses revenue of Kshs.176,143,000, out of which Kshs.65,915,532 relates to revenue earned on Liquefied Petroleum Gas (LPG) handled by African Gas and Oil Company Limited. A review of the license agreement dated 21 September, 2007 between Kenya Ports Authority (KPA) and African Gas and Oil Company Limited indicated that the Company was to pay a license fee in US Dollars for an amount equal to twenty-five percent (25%) of the Company's revenue derived directly from each tonne of LPG discharged, payable on a quarterly basis. Records provided for audit indicated that KPA charged the license fees based on a calculation of estimated service revenue of the Company charged at US Dollars twenty- two and sixty-five cents (USD22.65) exclusive of taxes for each tonne of LPG discharged at the facility as per Clause 7.7 of the Agreement without verifying the actual revenue of the Company. The rate charged was US Dollar one cent (USD 0.01) higher than the US Dollar twenty-two and sixty-four cents (USD22.64) provided in the agreement. However, KPA did not provide evidence that this was the service fee charged by the Company to base the revenue billed on the same. Consequently, the accuracy and validity of the license fee of Kshs.92,566,974 collected for the year ended 30 June, 2020 could not be confirmed.

Management response

568. The Management stated that African Oil and Gas Ltd (AGOL) remits to the Authority every quarter a Quarter of their annual revenue share generated from the use of the facility as provided for under clause 7 of the License Agreement. The data of the actual units handled is certified by an independent surveyor before being submitted to the Authority for revenue recognition. During FY 2019-2020 a total of Kshs 166,577,228 was earned as revenue. Attached is a copy of the agreement, invoices and supporting schedules

Quarter	Invoice	Amount USD (VAT Exclsv.)	Exchange Rate	Amount (Kshs)
Q1	90081463	448,017.94	103.35	46,302,654.10
Q2	90082435	330,921.16	101.59	33,618,280.64
Q3	90083706	373,351.27	101.26	37,805,549.60
Q4	90084360	458,219.15	106.61	48,850,743.58
		1,610,509.52		166,577,227.92

569. Further, Clause 7.7 of the Agreement provides a rate of USD 22.64 per ton. The tonnages are provided in three decimal places. Africa Oil and Gas Ltd computation and remittances are rounded up to two decimal places resulting in USD 22.65 per ton. The rounding up increased the rate by 0.01.

570. The following are the highlights of the agreement.

- The agreement is dated 21.9.2007 and is titled "General Works Agreement", the recital states that AGOL will develop the facility and use and maintain certain mooring buoys, anchorage for the mooring buoys, pipelines, pumps and a common user manifold and other works and installations within the port area for the conveyance of a LPG discharge or loaded at the facility to and from storage tanks and other facilities.
- The License Agreement dated 21.9.2007 relates to the development and operation of a common user handling facility for LPG in the Port of Kilindini.
- Recital A-KPA has followed due process and the laws and regulations relating to procurement in Kenya, agreed to grant AGOL a license and the right and privilege to develop a common user handling facility for the loading and discharge of LPG at the Port.

- Clause 2.2 A non-exclusive license to develop, construct, operate use and maintain the Facility for 33 years.
- Clause 2.5 non-discrimination. Should KPA permit another entity to engage in a similar business, KPA is to ensure the competitor does not enjoy any preference or advantage over AGOL.
- Clause 7.6 Tariff Charge; tariff rate to be charged by KPA to users of the Facility shall be limited to KPAs tariff for shore-handling services only. There will be no discrimination.
- Clause 7.7' AGOL to charge user service fees of USD 22.64.
- Clause 11.1; AGOL shall provide discharge and loading services at the Facility for all persons seeking to discharge or load LPG at the Port in accordance with the agreement.
- Clause 11.2; services to be offered on a commercial basis but subject to tariff collection procedures and conditions-not to discriminate against any person who wishes to use it.
- Clause 11.4; AGOL shall not refuse any user unless the facility is damaged, for safety reasons.

Committee observation

571. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had provided the annual service bill certificates of actual revenue of AGOL on a quarterly basis for the financial year under review.
572. The Committee observes that since the annual service bill certificates of actual revenue were provided for verification, the matter stands resolved.

2. Unconfirmed Establishment Expenses

573. As disclosed in Note 9 to the financial statements, the statement of profit or loss and other comprehensive income reflects establishment expenses amounting to Kshs.19,520,491,000. The following unsatisfactory observations were made:

2.1 Basic Salary Paid for Hours not Worked

574. The above balance of Kshs.19,520,491,000 constitutes basic salary of Kshs.7,473,722,000. Audit review of records revealed that basic salary was paid based on the hours worked as clocked in the time management system. However, the Management approved payment for hours not worked when staff came to work late (authority to work) and when staff left work before time (staff

release) in calculating basic pay for staff. This resulted in payment of salaries amounting to Kshs.312,021,986 for hours not worked. Further, time management records provided for audit review indicated that two hundred and thirty-nine (239) employees were absent for a continuous period of more than ten days each resulting to 78,456 hours lost through staff absenteeism. However, the employees were paid their full salaries and allowances totaling Kshs.36,780,469 contrary to Kenya Ports Authority Human Resource Manual, 2017 Paragraph C.4 (b) and K.5 (a) which requires payment of salaries based on actual hours worked and stoppage of salary to employees absent for a continuing period of ten days. In addition, recruitment documents provided for audit review revealed that the Authority engaged five (5) employees in management positions. However, the employment terms were revised without Board approval after employees had accepted the employment offer. This resulted in payment of salaries and allowances amounting to Kshs.2,014,362 over the amount set in the employment letters, contrary to the Authority's grading structure which has minimum entry points for various grades. Consequently, the propriety and validity of basic salaries of Kshs.19,520,491,000 could not be confirmed.

Management response

575. The Management stated that the Authority to work "is a record created in the system that allows an employee to work despite reporting late for duty. This facility is limited for employees that report late beyond 45 minutes and up to a maximum of three (3) hours." The concerned employee's attendance is maintained in the SAP system by a supervisor/line Manager.
576. The 32 employees for whom authority to work was maintained due to the various reasons provided, actually worked as confirmed by the line Managers/Supervisors who processed their payments via the system. Provided below is a sample time statement depicting authority to work, which is maintained by Supervisors, and can be verified in the system.

2.2 Time Statement for Employee No. 562913

November 2019

Weekly total			16.50	10.22	6.28-	0.00		
04	Mo	EE not at work	0.00	0.00	0.00	0.00	ZOFF	
05	Tu	T037 T006	06:37 09:45 3.13					
		Paid off	09:00 15:00 6.00	8.25	3.00	5.25-	0.00	Z1SU
06	We	T036 T007	06:43 15:04 8.34	8.25	7.75	0.50-	0.00	Z1SU
		Paid Break	0.50					
07		Authority to work	06:45 07:34 0.82					
		T006 T007	07:34 15:02 7.46	8.25	6.93	1.32-	0.00	Z1SU
		Paid Break	0.50					
08	Fr	T036 T007	06:34 15:04 8.51	8.25	7.75	0.50-	0.00	Z1SU
		Paid Break	0.50					
09	Sa	T039 T007	06:46 09:25 2.65					
		Paid off	09:00 15:00 6.00	8.25	2.65	5.60-	0.00	Z1SU
		Loss of Pay	0.25					
Weekly total			41.25	28.08	13.17-	0.00		
11	Mo	T038 T007	06:46 15:05 8.32	0.00	0.00	0.00	0.00	ZOFF
		Overtime @ 2 off da	8.00					
12		Authority to work	06:45 07:58 1.22					
		T007 T007	07:58 15:05 7.11	8.25	6.53	1.72-	0.00	Z1SU
		Paid Break	0.50					
13	We	T036 T007	06:35 15:01 8.44	8.25	7.75	0.50-	0.00	Z1SU
		Paid Break	0.50					
14	Th	T036 T007	06:33 15:03 8.49	8.25	7.75	0.50-	0.00	Z1SU
		Paid Break	0.50					
15	Fr	T036 T007	06:35 15:01 8.43	8.25	7.75	0.50-	0.00	Z1SU

December 2019

06	Fr	T036 T008	06:48 15:02	8.23	8.25	7.69	0.56-	0.00	Z1SU	
				0.25						
				0.50						
07	Sa	T038 T007	06:47 09:33	2.77	8.25	2.77	5.48-	0.00	Z1SU	
				8.00						
08	Su	T036 T008	06:44 15:01	8.29	0.00	0.00	0.00	0.00	ZOFF	
				8.00						
					41.25	33.51	7.74-	0.00		
09	Mo	T038 T008	06:50 15:01	8.19	0.00	0.00	0.00	0.00	ZOFF	
				8.00						
10	Tu	T037 T008	06:43 15:03	8.34	8.25	7.75	0.50-	0.00	Z1SU	
				0.50						
11	We	T036 T008	06:43 15:03	8.32	8.25	7.75	0.50-	0.00	Z1SU	
				0.50						
12	Th		EE not at work		8.25	7.75	0.50-	0.00	Z1SU	
13	Authority to work		06:45 08:59	2.23						
		T013 T038	09:01 15:21	6.33	8.25	5.47	2.78-	0.00	Z1SU	
				0.50						
14	Sa	T039 T008	06:43 15:02	8.32	8.25	7.75	0.50-	0.00	Z1SU	
				0.50						
					41.25	36.47	4.78-	0.00		
16	Mo		EE not at work		0.00	0.00	0.00	0.00	ZOFF	
17	Tu	T036 T007	06:40 15:03	8.39	8.25	7.75	0.50-	0.00	Z1SU	
				0.50						
18	We	T036 T007	06:52 15:04	8.20	8.25	7.63	0.62-	0.00	Z1SU	
				0.25						
				0.50						
19	Th	T036 T036	06:33 15:08	8.58	8.25	7.75	0.50-	0.00	Z1SU	
				0.50						
20	Fr	T038 T007	06:49 15:02	8.23	8.25	7.68	0.57-	0.00	Z1SU	
				0.25						

577. Further, Staff Release/Authorized Absence "is a record maintained in the system to account for an employee who has not clocked IN & OUT due to an official assignment outside the designated place of work (e.g. Training, Time-off to sit for exams, Sports, Burial, Tender Evaluation, COVID 19, SACCOS delegate meetings, Ramadhan staff release for Muslim female employees, etc.)."

578. The **1,254** employees on staff release during the period under review, were on authorized absence from duty and were paid in full, in accordance with the Human Resource Manual 2017 C4 (b) which states inter-alia that "Where salaries are paid at hourly rates, the monthly payment will be based on the actual number of hours worked during each month, taking into account any working hours of authorized absence for which the employee is to be paid in full or a portion of salary during the month." The summarized details of the nature of the staff releases for the concerned employees is provided below;

Summary of staff on release

Staff Release Reasons	No. of Staff
Covid 19	927
KECOSO Games	34
Time OFF for Exams	54
Staff Retreat	14
Court Case	2
Sports Activities (Bandari FC games)	13
Attending Burial	183
Tender Evaluation	23
Pregnancy (Released due to COVID-19)	1
Lactating Mothers (Released due to COVID-19)	3
Total Count	1,254

579. During the period under review, there was a global outbreak of Covid-19 pandemic which caused disruptions in normal working arrangements. As a mitigation measure, some employees were released to work from home to minimize the spread of the virus. This was in line with the Presidential Directives and Gazette Notices issued by the Government. A detailed list of staff on release with related reasons for maintaining the release was submitted.

580. On the 239 employees, management confirms that the said employees were recovered Kshs 39,871,195.00 for hours lost through absenteeism. A breakdown of the amounts recovered was provided.

581. Additionally, it was noted that the recoveries were not effected fully due to compliance with the one third rule on employee earnings as per section 19(3) of the Employment Act of 2007. In this regard, management is committed to ensure that the salaries and allowances paid and not worked for, are recovered in full as soon as the financial situation of the affected staff improves. This is as provided for in the Human Resource Manual, 2017 Paragraph C.4 (b).

582. Management wishes to clarify that the absences of the said employees were not for a continuous period of more than ten (10) days, but rather the absences were spaced out within the calendar month, hence the aforementioned action taken. Therefore, section K.5 (a) of the Human Resource Manual 2017 was not violated.

583. Further, it is imperative to note that disciplinary action (Forfeiture of Appointment) was taken against employees on prolonged absences.

584. Regarding the recruitment of 5 management staff, we wish to clarify that the salaries were negotiated with the staff prior to their engagement. This was found necessary to attract the required outsourced skill. The five (5) staff in question were the following:

No.	C/No.	Date of employment	Grade	Designation
1	564145	01.07.2019	HE1	General Manager Infrastructure Development
2	564206	04.11.2019	HM2	Senior Customer Relations Officer
3	564207	04.11.2019	HM2	Senior Engineer (Electrical/Electronics)
4	564208	18.11.2019	HM2	Senior Projects Engineer (Civil)
5	564209	25.11.2019	HM2	Senior Procurement Officer (CTC)

585. Employee C/No. 564145 was engaged on contract terms and was offered a basic salary at pay-point 76 which was Kshs. 338,500.00.

586. Four of the five employees upon receiving their offer letters requested the Managing Director for revision of their basic salaries citing the gross pay they were earning with their then current employers.

No.	C/No.	Initial Offer Salary & Pay Point	Revised Salary & Pay Point	Salary Scale Grade HM 2
1	564206	136,680.00 Pp 57	157,890.00 Pp 62	136,680.00 - 178,390.00 (Pp 57 – Pp 66)
2	564207	136,680.00 Pp 57	178,390.00 Pp 66	136,680.00 - 178,390.00 (Pp 57 – Pp 66)
3	564208	136,680.00	178,390.00	136,680.00 - 178,390.00

		Pp 57	Pp 66	(Pp 57 – Pp 66)
4	564209	136,680.00	157,890.00	136,680.00 - 178,390.00
		Pp 57	Pp 62	(Pp 57 – Pp 66)

587. This was in line with the provision of the Kenya Ports Authority Act Chapter 391 Part IV. Section 9 (d) which states thus: -

Subject to the directions of the Board, the Managing Director may—

(d) approve any alteration in salaries, wages or other terms and conditions of service of employees not involving expenditure in excess of the limits determined by the Board within its powers under paragraph (b) of section 10 on powers of the Board which reads as follows in 10 b)

588. *In the exercise of its duty under section 8, and subject to any directions of a general nature which may be given to it by the Minister, the Board may—*

(b) Approve any minor alteration in salaries, wages or other terms and conditions of service of employees of the Authority;

589. It is imperative to note that the staff did not have their salaries changed after they had accepted the offer given that technically they did not accept the initial offers, leading to revision of the same based on the above provisions.

590. In the past, the Managing Director approved similar cases and therefore serves as a precedent.

591. The Managing Director effectively indicated his approval by appending his signatures to the initial offers, the revised offers as well as the appointment letters which indicated the revised salaries.

Committee observations

592. The Committee observed that a schedule of breakdown of the 239 employees absent from work was provided.

593. The Committee observed that the mandate of revising personnel emoluments of staff of parastatals was vested with the Salaries and Remuneration Commission (SRC), and thus the KPA Act that mandated the Managing Director to alter the salaries with approval of the Board was in contravention of the SRC Act.

594. The Committee observed that the Authority further submitted proof of recovery of the allowances paid to the absentee employees without permission.

595. The Committee observes that since the allowances paid to the absent employees were recovered, the matter stands resolved.

Committee recommendation

596. The Committee reprimands the Accounting Officer for revising personnel emoluments of staff without the concurrence of the Salaries and Remuneration Commission.

2.3 Overtime Allowances

597. Note 9 further discloses payment of overtime allowances amounting to Kshs.2,441,884,000, which includes an amount of Kshs.879,764,063 in respect of overtime allowances approved and paid in excess of the 30% and 20% for operations and administrative employees respectively. This was done contrary to Paragraph C.9(h) of the Kenya Ports Authority Human Resource Manual, 2017 which requires overtime hours payable at the applicable rates to be limited to a maximum of thirty per cent (30%) enhanced time of the normal monthly working hours for operational employees and twenty per cent (20%) for administrative and non-operational employees. Further, included in the overtime allowances of Kshs.2,441,884,000 is Kshs.384,567,260, relating to third-shift allowances. However, review of payroll records indicated that the third-shift allowances paid were calculated at a rate of three percent (3%) of basic pay for every day worked resulting to a payment of Kshs.54,643,899. This is contrary to the Collective Bargaining Agreement of 2018/2019 Paragraph 14(e) which states that, 'third shift is regarded as a normal shift like the first and second shifts but due to the odd hours worked, the compensation is 15% of the basic monthly salary'. Consequently, the propriety and validity of third shift allowances of Kshs.54,643,899 for the year ended 30 June, 2020 could not be confirmed.

Management response

598. Management stated that during the audit period, the Authority was experiencing staff shortages while at the same time there were various emerging business needs namely:

- (i) the opening of the second container terminal.
- (ii) the expansion of the ICD – Nairobi.
- (iii) opening of ICD – Naivasha.
- (iv) launching of the Lamu Port; and
- (v) the operationalization of the Standard Gauge Railway (SGR).

599. In view of the foregoing, there was immense pressure to increase the manning levels at operational areas within the Authority. This could not be achieved because of a circular letter issued by the Secretary of the State Corporations Advisory Committee (SCAC) letter Ref: OP/SCAC.9/83 (78) dated 18th May, 2018 which froze the filling of all vacant positions until such a time that the staff establishment is considered and approved. (-SCAC *Employment Freeze submitted*).
600. As a result of the freeze in filling of vacant positions, the Authority had to authorize the staff to work overtime beyond the set overtime hours of thirty percent (30%) enhanced time of the normal monthly hours for operational employees and twenty percent (20%) for administrative/non-operational employees.
601. Therefore, the expenditure of Kshs 879,764,063 in excess overtime allowances paid during the audit period was inevitable for the smooth running of port operations and to meet business/customers' demands.
602. Additionally, Management has implemented system locks to only pay overtime within the 30% cap with effect from March 2020 and any overtime hours worked above the set limit must be approved by the Managing Director for payment. Memo Ref: HRAM/1/6/20 of 19th November 2019 on System Configuration and Implementation of 20% & 30% Overtime limits to ICT and Staff Circular MMN/9/2/03 26th August 2021 on Overtime Management.

2.4 Third Shift Allowances Paid to Staff

603. Management wishes to confirm that the third shift allowances of Kshs 54,643,899 for the year ended 30 June 2020 was in line with:
- (a) CBA 2018-2019 Clause 14. (e) Third Shift as a normal shift
Third Shift is regarded as a normal shift like the first and second shifts. However, due to the "Unsociable Hours" worked during the third shift, a compensation of 15% of the basic monthly salary shall be paid in addition to the monthly salary provided that: -
- i. The employee has been rostered to work on the shift and,
 - ii. The employee has worked for at least one full week of the third shift within the month he was rostered.
- (b) CBA 2018-2019 14. (f) Repeated Third Shift
Repeated third shift will be paid at 15% of the Basic Salary.

(c) the Human Resource Manual 2017 Clause C.4b which states "Where salaries are paid at hourly rates, the monthly payment will be based on the actual number of hours worked during each month, taking into account any working hours of authorized absence for which the employee is to be paid in full or a portion of salary during the month." The shift allowance is therefore paid proportionately for days worked at a rate of 3% per night.

604. There are various scenarios for which the third shift allowance is paid proportionate to the days worked:

- i) When an employee proceeds on leave, falls sick, attends training, on authorized release during a rostered third shift.
- ii) Where a rostered third shift week in a particular month spill over to the subsequent month.
- iii) Where an employee proceeds on duty travel when scheduled to work on third shift.

Refer to:

- I. Third Shift Monthly Time Statements July 2019 -June 2020 attached.
- II. Third Shift Allowance Paid Less than five days 2019-2020 FY.

Committee observations

605. The Committee observed that staff shortage in the institution and increased operations at the port due to commencement of the SGR operations without employing new employees led to many staff working extra hours and thus increase in overtime allowances.

606. The Committee noted that KPA operated on a four-shift system, and employees work for five days in a week with no overtime. However, overtime is earned when an employee works in a shift on the extra two days of the week which are considered rest days.

607. The Committee observed that there was need for KPA to develop a clear road map to eliminate the payment of overtime allowances.

608. The Committee observed that negotiations were ongoing for the new CBA, and that the Authority used it to pay the allowances as there was a vacuum on the document to use.

609. The Committee observes that the explanation of the Accounting Officer on the reasons that caused the staff to work for extra hours, resulting in overtime allowances, was satisfactory, hence, the matter stands resolved.

Committee recommendation

610. The Committee recommends that in future the Accounting Officer should ensure the management employs new staff to mitigate the need for overtime payment.

2.5 Overtime Allowances Paid to Employees on Training Grades

611. Included in overtime allowances of Kshs.2,441,884,000 is an amount of Kshs.29,469,195, for overtime allowances paid to employees on training grades, contrary to Paragraph C.9 (h) of the Kenya Ports Authority Human Resource Manual, 2017 which prohibits payment of overtime allowances for this category of employees. Consequently, the propriety and validity of overtime allowances of Kshs.29,469,195 for the year ended 30 June, 2020 could not be confirmed.

Management response

612. The management stated that the 150 employees were on training grades for the period under review and were paid overtime allowances due to exigency of services caused by shortage of staff arising from:

613. The expansion of port services.

- i. Operationalization of the first phase of the 2nd Container Terminal
- ii. Standard Gauge Railway (SGR),
- iii. expansion of the Inland Container Depot (ICD) Nairobi and Naivasha
- iv. The completion and operationalization of first berth at the Port of Lamu.

614. Natural attrition without corresponding recruitment as recruitment had been frozen by State Corporations Advisory Committee (SCAC) letter Ref: OP/SCAC.9/83 (78) dated 18th May 2018.

615. Compliance to COVID – 19 pandemic Safety Protocols

616. The above-listed demanded for more labour and to mitigate same, it became necessary to deploy employees on training grades to work during normal shift and overtime where applicable. The assigning of the trainees to work overtime was approved by respective departmental heads.

Committee observations

617. The Committee observed that employees on training grades were staff who were undergoing on-job training to operate special machines, and with time they would operate the machines on their own and thus qualified to work on shifts.

618. The Committee observes that since the employees on training grades were staff who were undergoing on-job training to operate special machines, and the Authority required more employees due to the increased operations at the time, the explanation on payment of overtime to these employees was satisfactory, and the matter stands resolved.

2.6 Payments Made for Work Allocated After End of Employee Shift

619. Time management records provided for audit review indicated that various employees were assigned their respective work shifts. However, audit review of the work allocation schedules and payroll records revealed that various employees were assigned to work for extra hours after their shifts for which they were paid Kshs.1,682,646,318. Further, 1,337 employees who worked for eight hours in a day were paid overtime allowance amounting to Kshs.214,652,054, contrary to the policy. Consequently, the propriety and validity the establishment expenses of Kshs.1,897,298,372 could not be confirmed.

Management response

620. The audit observation is noted. However, management wish to clarify that, employees were assigned to work for extra hours after their shifts due to exigency of duty and shortage of staff arising from the following.

621. The expansion of port services.

- i. Operationalization of the first phase of the 2nd Container Terminal
- ii. Standard Gauge Railway (SGR),
- iii. expansion of the Inland Container Depot (ICD) Nairobi and Naivasha
- iv. The completion and operationalization of first berth at the Port of Lamu.

622. These Port operations expansions necessitated demands for labour which led to deployment of employees from the port of Mombasa which was exacerbated by the Government freeze on employment thus it was necessary for employees to work for extra hours after their shifts.

623. Further, during the period under review, the normal working arrangements were disrupted by the Covid-19 pandemic which necessitated the release of some employees to work from home in order to minimize crowds at the workplaces in compliance with Government directives. The said mitigation measures on staff reductions had an impact/effect which necessitated work extension resulting in overtime work and payments.

624. Management clarifies further that the 1,337 employees who worked for eight hours in a day and were paid overtime allowance amounting to Kshs 214,652,054, were part of employees who worked beyond their scheduled/normal work time as already pointed out. A sample screen shot of employee time statement is shown below.

Evaluation period from 01.07.2019 to 31.07.2019

Individual results											
Day	Text	ITer	OTer	Start	End	rec.	Plnd	Skel.	Flex	OTime	DWS
01	Mo	T073	T073	06:37	23:02	16.43	8.25	7.75	0.50-	0.00	Z1SU
	Overtime @	1.5				8.00					
	Paid Break					0.50					
02	Tu	T073	T073	06:34	18:01	11.46	8.25	7.75	0.50-	0.00	Z1SU
	Overtime @	1.5				3.00					
	Paid Break					0.50					
03	We	T073	T064	06:39	18:05	11.43	8.25	7.75	0.50-	0.00	Z1SU
	Overtime @	1.5				3.00					
	Paid Break					0.50					
04	Th	T073	T064	06:20	18:02	11.69	8.25	7.75	0.50-	0.00	Z1SU
	Overtime @	1.5				3.00					
	Paid Break					0.50					
05	Fr	T072	T064	06:20	18:05	11.76	8.25	7.75	0.50-	0.00	Z1SU
	Overtime @	1.5				3.00					
	Paid Break					0.50					
06	Sa	T064	T065	06:24	18:01	11.62	0.00	0.00	0.00	0.00	ZOFF
	Overtime @	2	off da			11.00					
07	Su	T064	T064	06:45	18:09	11.39	0.00	0.00	0.00	0.00	ZOFF
	Overtime @	2				11.00					
Weekly total							41.25	38.75	2.50-	0.00	
08	Mo	T064	T073	06:25	18:06	11.67	8.25	7.75	0.50-	0.00	Z1SU
	Overtime @	1.5				3.00					

Committee observation

625. The Committee observed that the approval process was done post-facto to avoid disruption of services, hence the matter stands resolved.

2.7 Irregular Payment of Berth Productivity Incentive

626. The balance of staff allowances of Kshs.2,228,097,000, out of which Kshs.872,182,131 was paid as monthly berth productivity incentive to 3,669 employees. Records provided for audit indicated that the Management approved payment of berth productivity allowance only when there is

performance over and above the set targets, subject to amendments by the Board's Human Resources Committee. However, it was observed that payments were based on all units achieved including normal target. Consequently, the propriety, validity and lawfulness of staff allowances of Kshs.19,520,491,000 could not be confirmed.

Management response

627. The management stated that the observation regarding the payment of the Berth Productivity Incentive has been noted. The Berth Productivity Incentive Scheme was approved by the Board in its 333rd Regular Board Meeting held from 1st to 2nd September 2017. Implementation modalities were approved by the Executive Management Committee (EXCOM) in its 323rd Special Executive Management Committee Meeting held on 27th September 2017.
628. The computation for payments was in line with the payment formula as provided by the then approved Berth Productivity Incentive Scheme – Berth Productivity Incentive Scheme clauses 4.1.2, 4.1.3 & 4.1.4. Extracts are shown below;

4.1.2 Formula: main terminal

1. Operations Performance Reward (y)	=	No. of Moves per Shift \times Rate per container
2. Technical Staff Reward (z_1)	=	15% of y
3. Operation Staff Reward (z_2)	=	85% of y
4. Reward Paid to Equipment Operators	=	70% of z_2
5. No. of equipment operators per hook	=	n
6. Reward paid to One equipment Operator	=	$(0.70 \text{ of } z_2)/n$
7. Reward paid to the remaining staff in the team per hook	=	30% of z_2
8. The total no. Of the remaining staff in the team per hook	=	x

9.	Reward paid to each of the remaining staff in the team per hook	=	$(0.30 \text{ of } z_2) / x$
----	---	---	------------------------------

Ship's crane performance target

MOVES PER HR PER CRANE		MOVES PER SHIFT PER CRANE	REWARD KES
8(Minimum)		64-71	200
9 -10		72-87	250
11 -12		88-103	265
13 -14		104-119	285
15 - 16		120-128	300

4.1.3 Formula: combi berths

1.	Operations Performance Reward (y)	=	No. of Moves per Shift \times Rate per container
2.	Technical Staff Reward (z_1)	=	5% of y
3.	Operation Staff Reward (z_2)	=	95% of y
4.	Reward Paid to Key Staff	=	70% of z_2
5.	No. of Key Staff per hook		n
6.	Reward paid to One Key Staff	=	$(0.7 \text{ of } z_2) / n$
7.	Reward paid to the remaining staff in the team per hook	=	30% of z_2
8.	The total no. of the remaining staff in the team per hook	=	x
9.	Reward paid to each of the remaining staff in the team per hook	=	Kenya shillings $(0.3 \text{ of } z_2) / x$

Harbour mobile crane

MOVES PER HOUR PER CRANE	MOVES PER SHIFT PER CRANE	REWARD KES
12(Minimum)	96-103	200
13- 14	104-119	250
15 - 16	120-135	265
17-18	136-151	285
19 - 20	152-160	300

4.1.4 Formula: conventional cargo

1. Operations Performance Reward (y)	=	No. of Moves per Shift \times Rate per container
2. Technical Staff Reward (z_1)	=	5% of y
3. Operation Staff Reward (z_2)	=	95% of y
4. Reward Paid to Key Staff	=	69% of z_2
5. No. of Key Staff per hook	=	n
6. Reward paid to One Key Staff	=	$(0.69 \text{ of } z_2)/n$
7. Reward paid to the remaining staff in the team per hook	=	31% of z_2
8. The total no. Of the remaining staff in the team per hook	=	x
9. Reward paid to each of the remaining staff in the team per hook	=	$(0.31 \text{ of } z_2)/x$

Committee observation

629. The Committee observed from the explanation of the Accounting Officer at the time of examination that the incentive scheme was a way of encouraging

productivity among employees working in the berth section. Further, the Committee observed that the Management provided minutes of the Board approving payment of the incentive for verification by the OAG.

630. The Committee observes that since the accounting officer submitted the Board's approval of the payment of the incentives, the matter stands resolved.

3. Unsupported Expenditure – Operating Expenses

631. Operating Expenses As disclosed in Note 10 to the financial statements, the statement of profit or loss and other comprehensive income for the year ended 30 June, 2020 reflects operating expenses of Kshs.6,852,267,000.

3.1 Fuel Expenses

632. Included in the operating expenses of Kshs.6,852,267,000 are fuel expenses amounting to Kshs.905,470,000. During the year under review, Management issued fuel purchase orders for Kshs.295,355,691. Although the Authority migrated from purchase order system to pipeline system during the year under review, evidence of fuel usage and invoice details on the new system were not provided for audit review. Further, the Authority requested for exemption from the Head of Public Service Circular. No. OP/CAB.9/108A of 30 April, 2015 which directed Ministries and Government Agencies to liaise and negotiate with the National Oil Corporation of Kenya (NOCK) for supply of fuel through a letter Ref. PSM/PC/3/06 of 27 December, 2019. However, approval of the request was not provided for audit review. Consequently, the validity of fuel expenses of Kshs.905,470,000 for the year ended 30 June, 2020 could not be confirmed.

Management response

633. The management stated that the Local Purchase Orders (LPOs) worth Kshs. 295,355,691 were issued to Fossil Supplies Limited. This was done outside the pipeline system. The LPOs were issued using material codes different from the pipeline process. The supplies were awarded as a stopgap measure since the Authority was dissatisfied with the level of services it was receiving from the National Oil Corporation of Kenya (NOCK). This move was intended to avert disruption of services.

634. LPOs were stopped from being issued to fuel vendors since the price of fuel keeps on fluctuating on monthly basis hence the Authority opted for the pipeline payment system i.e. the payment is done by inputting the current prices

submitted by the vendor from the Regulating Authority which is done from the central stores.

635. Since the process was changed, all ordering, receiving, verification and consumption is being done by the fuel committee and the officer in charge at the central store. A pipeline material is a material that flows directly into the production process from a pipeline (for example, oil), from a pipe (for example, tap water), or from another similar source (for example, electricity). Materials from the pipeline can be withdrawn from the pipeline at any time and in any quantity.

636. Depending on the system configuration, a material can be withdrawn only from the pipeline or, in addition to the pipeline, normal stocks of the material can also be managed. (Material Type PIPE). Pipeline handling is mandatory for materials with material type PIPE, thus only withdrawals from the pipeline can be posted for these materials. These materials have the following characteristics:

- They are not procured. They can be withdrawn from the pipeline at any time and in any quantity. (No Purchase Order)
- They are not stored or kept in stock. No physical inventory is taken.
- The pipeline withdrawal results in a vendor liability that must be settled periodically. (No Invoice Parking)
- A consumption history is kept through the SAP System providing evidence of fuel usage and order system to the pipeline system.

637. The direct Procurement Method was used due to urgency as a stop-gap measure. NOCK had failed to deliver on several occasions' contrary to the contract. They had a catalogue of fuel stock outs which affected equipment availability thus negatively impacting on the Authority's operations. The issues persisted despite having several meetings. In addition, there were unresolved issues of supply of adulterated fuel from NOCK to the Authority tugboat Duma II which was grounded for 45 days and other similar injustices meted on the Authority. Continued reliance on NOCK was hurting the business of the Authority and it was not in the best interest of the Authority to continue relying on the oil supplied by the State Agency. Grounding of machines at the Authority had negative effects on the operations of the Authority.

638. The Authority sought intervention from the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works vide a letter dated 25th June 2019, but no response was received. The Authority opted for open tender method for procurement of fuel vendor since that was the only way of obtaining a supplier

who possessed the requisite infrastructure and resources to serve the port in a manner above what the Authority had received from NOCK.

Committee observations

639. The Committee observed from the explanation of the Accounting Officer at the time of examination that the Head of Public Service issued a Circular requiring government agency to source for fuel directly from the National Oil (NOCK). However, NOCK was not in a position to supply the fuel.
640. The Committee observed that the management had provided extracts of the invoices that were used to settle fuel expenses. However, KPA contracted Fossil Supplies Limited through direct procurement and this was necessitated by the incapacity of NOCK to supply the fuel.
641. The Committee further observed that KPA had sought for assistance from the parent Ministry regarding the challenge it was experiencing on fuel supply and the Ministry did not revert on the assistance sought.
642. The Committee observes that the explanation of the Accounting Officer on resulting into direct procurement as a stop gap measure as a result of failure by NOCK to supply fuel in line with the circular by the Head of Public Service is satisfactory, hence the matter is resolved.

3.2 Repair, Renovations and Rehabilitation of Kisumu Pier and Dock Infrastructure

643. The operating expenses of Kshs.6,852,267,000 also include expenditure incurred on port infrastructure repairs of Kshs.2,541,375,000, out of which Kshs.63,307,155 was in respect of proposed renovations and modifications of Kisumu pier and dock yard offices. Available records indicated that purchase order for Kshs.101,270,166 was issued to a contractor for the works. Although, the contractor invoiced the Authority and was paid for works valued at Kshs.63,307,155, details of measured works, approved and certified works paid for were not available for audit review. Under the circumstances, the propriety and validity of the amount paid to the contractor of Kshs.63,307,155 could not be confirmed

Management response

644. The Management stated that they agree with the auditor's findings regarding the issuance of an LPO for Kshs 101,270,166 to M/s Koornamme Ladies Welfare group for the renovation of offices at the Kisumu Port and payments amounting

to Kshs 63,307,155. The payments made were on interim basis and for measured works as tabulated below: -

IPC NO.	INVOICE NO.	DATED	AMOUNT PAID - Kshs
1	080	14 th February 2020	21,736,445.09
2	058	13 th March 2020	22,572,607.60
3	060	15 th June 2020	18,998,103.13
	TOTAL		63,307,155.82

The relevant invoices with the interim payment certificates indicating the measured works for the amounts invoiced were submitted.

Committee observations

645. The Committee noted that the management had supplied the invoices and payment vouchers related to M/s Koornamme Ladies Welfare group however there were discrepancies noted in the names contained in the invoices and payment vouchers.
646. The Committee observed that Works completion was verified during the audit cycle of the FY 2020/2021.
647. The Committee observes that since the works were completed and verified by the OAG, the matter stands resolved.

4. Unclaimed Value-Added input Tax

648. As disclosed in Notes 8 and 10 to the financial statements, the statement of profit or loss and other comprehensive income for the year ended 30 June, 2020 reflects administrative expenses of Kshs.3,995,660,000 and operating expenses of Kshs.6,852,267,000. Included in these expenses is input Value Added Tax (VAT) of Kshs.26,893,244 which was expensed instead of being claimed during the year under review. However, it is not clear why manual invoices were received and settled without the accompanying tax invoices, resulting in VAT input tax losses of Kshs.26,893,244. The Management explained that the VAT was expensed following expiry of six months before claiming the same due to un-availability of tax invoices thus becoming time barred as per VAT Act 2013 Section 17(2) which states in part, 'provided that the input tax shall be allowable for a deduction

within six months after the end of the tax period in which the supply or importation occurred.'

Management response

649. The Management stated that the input VAT amounting to Kshs 26,893,244 was expensed during the year since it could not be offset against the Output VAT. The Authority was barred from offsetting the input VAT as the invoices were processed beyond the six months period allowed for offsetting the input VAT. Where the input VAT is not deductible, the Income Tax Act under section 15 allows it to be expensed as expenditure wholly and exclusively incurred in the production of income.

Summary of the reasons for not offsetting the input VAT are provided below:

No.	Amount - Kshs	Reason for not offsetting	Remedial Action
1	16,807,374.00	Time barred resulting from Board embargo on Civil works payments on account of Ethics & Anti-Corruption Commission investigation for the period January 2020 to January 2021 when the embargo was lifted.	Sensitization on resolving payments disputes within the allowed six months period.
2	8,661,998.00	Time barred resulting from late submission of invoices by vendors	Sensitization on submission of invoice within the allowed six months period
3	552,693.00	Expressly barred from offsetting input tax – VAT Act section 17 (4)	Allowed to expense in accordance with Income Tax Act Sec. 15(1)
4	532,756.00	Time barred resulting from system malfunction due to network interruptions	System network power backups installed.
5	282,971.00		

No.	Amount - Kshs	Reason for not offsetting	Remedial Action
		Delayed at user department	Heads of Divisions and Departments have been sensitized on timely processing of payments
6	50,496.00	Disallowed on account of vendor tax status e.g., Vendors without VAT obligation, incomplete processing of Electronic Tax Registers receipts, Invalid KRA PIN on imprest procurements	All Expenditure clerks in the Port creditors ledger and Procurement staff have been trained on VAT requirements
7	318.4	Processing error at Creditors ledger. The Release and reject buttons are close to each other and an error might happen when processing	Creditors Ledger staff sensitized on keenness in processing invoices
8	4,638.00	Misclassified as VAT time barred at the point of processing VAT Return while not yet time barred	The staff at the Tax unit have been trained on correct interpretation of section 17 of the VAT Act.
	26,893,244.40		

650. All invoices submitted and processed for payment were proper tax invoices contrary to the observation by the Auditor that manual invoices were received and settled without the accompanying tax invoices.

Committee observations

651. The Committee observed that the delays were occasioned by late submission of invoices by vendors, and the management was advised to improve its systems in order to eliminate such avoidable losses.

652. The OAG informed the Committee that in the subsequent year's audit the management had improved its accounting processes as the losses had significantly reduced.

653. The Committee observes that since the Management had improved its system and minimized losses in the subsequent year, the matter is resolved.

5. Inclusion of Bandari Maritime College Expenditure

654. The statement of profit or loss and other comprehensive income reflects total operating expenses of Kshs.41,412,101,000 for the year ended 30 June, 2020, out of which Kshs.191,008,710 relates to Bandari Maritime College. However, the College became an autonomous entity vide Executive Order No.1 of 2018 with a Board of Directors and even submitted the financial statements for the year ended 30 June, 2020 to the Auditor- General for audit. The amount ought to have been classified as grants or transfers to other Government entities. Consequently, the operating expenses of Kshs.191,008,710 could not be confirmed as fairly presented.

Management response

655. The management stated that as Bandari College, which had hitherto been a department of Kenya Ports Authority, embarked on the journey of separation from the Kenya Ports Authority (KPA), it encountered a multitude of challenges pertaining to existing contracts and ongoing services in addition to staff complement and competence. In adherence to the stipulated terms of separation, it was incumbent upon the KPA to responsibly conclude these contracts prior to the finalization of the separation process. Consequently, the conversion of these existing contractual obligations into grants for Bandari College which did not previously operate as an independent legal entity would have been futile and impractical.

656. It is paramount to acknowledge that all invoices were directed to KPA, and the framework purchase orders were similarly designated under the auspices of the KPA. This underscores the intricate web of contractual obligations that were deeply interwoven with the operations of KPA. Therefore, a straightforward transfer of these obligations to Bandari College in the form of grants would not only have been administratively burdensome but would also have failed to accurately reflect the true essence of the contractual relationships established under the purview of the KPA.

657. State Department of Transport / Maritime and the National Treasury accorded KPA approval to continue supporting the College during its transition period with the College expenses incorporated in the KPA corporate budget in line with prior contractual obligations between KPA and service providers to the College.
658. Grants are provided on specific conditions to be complied with by the grant receiver. However, in this instance there were no conditions, KPA was just meeting its contractual obligations. Transfers on the other hand, have a repayment obligation. Bandari College was not expected to repay the financial support provided during the transition period.

Committee observations

659. The Committee noted that KPA had received a letter from the National Treasury authorizing them to continue supporting Bandari Maritime College.
660. The Committee was informed that currently, Bandari Maritime College was running independently, and the transfer of assets was ongoing.
661. The Committee observes that since management had received authorization from the National Treasury to support Bandari Maritime College, the matter stands resolved.

6. Unsupported Trade and Other Payables

662. The statement of financial position as at 30 June, 2020 reflects trade and other payables of Kshs.14,736,626,000. Included in the balance is accrued expenditure of Kshs.2,263,706,094, out of which Kshs.409,925,742 was not supported by delivery notes and confirmation reports for services rendered or invoiced. Consequently, the accrued expenses amounting Kshs.2,263,706,094 could not be confirmed as fairly presented.

Management response

663. The Management stated that according to the Framework of International Accounting Standards (IAS) & International Financial Reporting Standards (IFRS), one of the underlying assumptions for the preparation of financial statements is the Accrual basis of accounting. Under this assumption, the effects of transactions and other events are recognized during the period when they occurred. Expenses are accrued to comply with the matching concept of accounting and IAS No.8 on accounting estimates.

664. Therefore, the Kshs 409,925,742 was accrued only after giving reference to the relevant LPO or correspondence with evidence of actual services provided or work commencement to third parties by the Authority. Expenditure accrued included ongoing repairs and maintenance services, uniform and safety gear, printing works, Auditor-General fees amongst others. Invoices, and documentation were submitted. Accruals are reversed in the subsequent financial year when the invoices are received and processed.

Committee observation

665. The Committee observed from the explanation of the Accounting Officer at the time of examination that the invoices and other documentation were availed for verification by the OAG hence the matter stands resolved.

666. The Committee directs the Authority to avail documents in time to the OAG in line with section 68 (2) (k) of the Public Finance Management Act, Cap 412A.

7. Accrued Liability For Defined Contribution (DC) Members

667. The statement of financial position as at 30 June, 2020 reflects retirement benefits non- current liability of Kshs.3,374,400,000 and current liability of Kshs.535,200,000, all totaling to Kshs.3,909,600,000. Audit review of the actuarial valuation report of the scheme indicates a total of 3,490 active members in the defined benefit scheme, out of whom 2,675 are members who moved to the defined contribution although a portion of their pension benefits was still held in the defined benefits scheme. However, the actuarial valuation report indicated that the valuation of assets was based on 3490 members instead of 795 members, contrary to The National Treasury Circular Ref. No EPN 171/07 Vol Q (94) dated 16 June, 2011 which directed the Authority not to grant revaluation to those who choose to move to the DC Scheme or to those who had to move to the DC Scheme because they were below 45 years. The valuation may have been materially overstated by inclusion of outstanding defined benefits portions retained when the members moved to the defined contribution scheme. Consequently, the accuracy of retirement benefit liability of Kshs. 3,642,000,000 as at 30 June, 2020 could not be confirmed.

Management response

668. The management stated that the National Treasury Circular No. 18 of 2010 under clause 1 (b) required all government entities' Pension Schemes to convert

from DB Schemes to DC schemes. The circular required all DB Schemes converting to DC Schemes to be fully funded. However, KPA Pension Scheme was underfunded and therefore could not be converted fully to DC Scheme. Refer to the submitted extract of Actuarial valuation report.

669. Further, the National Treasury circular No. 18 of 2010 under clause 1 (b) indicated that "the conversion process will be guided by the provisions of the RBA Act, Regulations and guidelines issued by the RBA. The Retirement Benefits Authority issued Prudential guideline RBA 001 on Schemes conversion on 17th August 2012 clauses 3.1 & 3.2 require underfunded DB Schemes to undertake annual actuarial valuations for all members. Prudential guideline RBA 001 makes it mandatory for Schemes to allow for revaluation of past accrued benefits where members cease to accrue any future benefits.
670. The letter from the Director of Pensions reference EPN 171/07 Vol Q (94) dated 16 June 2011 in response to the letter from the Scheme Actuary M/s Alexander Forbes provided options of either freezing the benefits or continuing with the actuarial valuation considering the liability obligations on the sponsor. It did not make it mandatory that the benefits must be frozen.
671. This is supported by the Prudential Guideline Number 001 on Schemes conversion issued on 17th August 2012. Clause 6.1.3 of the Prudential Guideline RBA 001 states that:

Prudential Guideline No. RBA 001

6.1.3 The trustees sets up a remedial action plan to fund the scheme's deficit within an appropriate period but no more than six (6) years. No transfers to the Defined Contribution scheme shall be made from the Defined Benefit scheme until the deficit has been cleared. Statutory valuations of the Defined Benefit scheme shall be carried out as long as it's operational.

672. Members who were in the DB Scheme and aged below 45 years joined the DC scheme while retaining their benefits in the DB Scheme. DB Members who moved to the DC scheme effective 01 January 2013 could not move their accrued benefits to the DC Scheme as at 31 December 2011 when the decision was made. The DB Scheme is currently holding accrued liability for members who joined the DC Scheme while members who remained in the DB Scheme continue to accrue future benefits from 31 December 2012. Members who are in both DC

scheme and DB scheme are only accruing future benefits effective 01 January 2013 from the DC scheme. So, there is no double benefit for those members.

673. Based on the Treasury circular No. 18 of 2010 and RBA Prudential Guideline 001, actuarial valuation was done for 3,490 members (2,675 who are in both DB & DC Schemes, while 795 members were in only in DB Scheme).
674. The DB Scheme closure structure and the DC Scheme structure were all approved by the Retirement Benefits Authority and National Treasury.

Committee observations

675. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had anchored the operations of the retirement benefits scheme on the prudential guidelines that stated the method of handling deficits that arose from the migration of members from the DB to the DC scheme and captured the deficit in their financial statements.
676. The Committee further noted that the management obtained approvals from the National Treasury and the Retirement Benefits Authority to convert from DB schemes to DC schemes.
677. The Committee observed that since the Authority obtained approvals from the National Treasury and the Retirement Benefits Authority with regards to migration of members from the Defined Benefits to Defined Contribution Scheme, the matter stands resolved.

8. Alienated Properties

678. As similarly reported in the previous year, the property, plant and equipment balance include land leased-out valued at Kshs.15,190,900,000 and land and buildings with a net book value of Kshs.76,329,444,000 as at 30 June, 2020. Information provided for audit review indicated that twenty-nine (29) parcels of land belonging to the Authority had been invaded by private individuals and companies. The Management indicated that third parties had purportedly acquired ownership rights over the properties and undertaken initiated development thereon. However, the Authority had filed suits in various courts of law which are still pending for determination. Further, out of these twenty-nine (29) properties, only nine (9) properties valued Kshs.755,100,000 were included in the Authority's fixed assets register while seventeen (17) properties valued at Kshs.732,500,000 and three (3) properties of unknown value were not included. Consequently, the property, plant and equipment balance of Kshs.267,063,658,000 as at 30 June, 2020 was therefore, not fairly stated.

Management response

679. The management stated that the twenty-nine (29) parcels of land the subject of this audit review are as per the table below:

No.	Parcel Number	SIZE
1.	Mombasa/Block XLVII/111	0.704 Acres
2.	Mombasa/Block XLVII/112	0.7503 Acres as per Official Search dated 5 th January 2000 (<i>Actual measurement is 0.7503 Ha</i>)
3.	Mombasa/Block XLVII/113	0.535 Acres
4.	Mombasa/Block XLVII/114	0.363 Acres
5.	Mombasa/Block XLVII/115	0.422 Acres
6.	Mombasa/Block XLVII/116	0.639 Acres
7.	Mombasa/Block XLVII/117	0.558 Acres
8.	Mombasa/Block XLVII/118	0.929 Acres
9.	Mombasa/Block XLVII/179	0.0336 Ha
10.	Mombasa/Block XXVI/1001	Approx. 0.1805 Ha
11.	Mombasa/Block XXVII/508	0.1278 Acres
12.	Mombasa/Block XXVI/928	0.09 Ha
13.	Mombasa/Block XLVII/149	Approx. 0.22 Ha
14.	Mombasa/Block XLVII/150	Approx. 0.156 Ha
15.	Mombasa/Block XLVII/151	Approx. 0.450 Ha
16.	Mombasa/Block XLVII/152	Approx. 0.450 Ha
17.	Mombasa/Block XLVII/153	Approx. 0.450 Ha
18.	Mombasa/Block XLVII/154	Approx. 0.0450 Ha
19.	Mombasa/Block XLVII/155	Approx. 0.068 Ha
20.	Mombasa/Block XLVII/162	Approx. 0.0451 Ha
21.	Mombasa/Block XLVII/163	Approx. 0.0531 Ha
22.	Mombasa/Block XLVII/164	Approx. 0.500 Ha
23.	Mombasa/Block XLVII/165	Approx. 0.0496 Ha
24.	Mombasa/Block XLVII/166	Approx. 0.0497 Ha
25.	Mombasa/Block XLVII/167	Approx. 0.0502 Ha
26.	Mombasa/Block XLVII/168	Approx. 0.0501 Ha
27.	Mombasa/Block XLVII/169	Approx. 0.032 Ha

No.	Parcel Number	SIZE
28.	Mombasa/Block 1/469	0.2501 Ha
29.	Mombasa/Block 1/528	0.1100 Ha
	Mombasa/Block 1/529	0.5059 Ha

680. Third parties purportedly acquired title documents over the plots, and some have even undertaken developments on some parcels of land. In some of the parcels, KPA and EACC have taken steps to file various cases for recovery through cancellation of the titles and eviction as the case may be.

681. With respect to the audit observation, the table below summarizes the status of the cases filed by KPA and the status of the plots:

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
1	Mombasa/Block XLVII/111 0.704 Acres	Robert Mutiso P. O. Box 285587 Nairobi	87,500,000	This case was filed by KPA on 5 th October 2001 against Robert Mutiso Lelli, Commissioner of Lands, KCB and the Chief Land Registrar. KPA seeks a permanent injunction to restrain the defendants from dealing with land parcel which was registered under the name of the General Manager East	ELC NO. 495 OF 2001 - KPA vs Robert Mutiso Lelli and 3 Others A.B Patel and Patel LLP

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
				<p>Africa Harbours but was cancelled and registered in the name of the Government before it was irregularly allocated to Robert Mutiso Lelli who charged it to KCB.</p> <p>Further, the suit property has since changed hands and is now registered in the name of Masumin Holdings Limited which was joined as a Defendant.</p> <p>When the matter came up for hearing on 10th July 2024, Masumin Holdings sought and was granted leave</p>	

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
				<p>to pursue an amicable settlement with KPA. Through an email dated 22nd July 2024, Masumin's Advocate wrote to KPA's Advocate on stating that it was duped into buying the property for Kes. 7.5 Million Shillings and that it is willing to relinquish the title to KPA in settlement of the suit with each party bearing its own costs.</p> <p>KPA has since instructed its Advocate to accept the proposal and structure a consent to be filed before the next Mention</p>	

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
				date on 3 rd October 2024.	
2	Mombasa/Block XLVII/112 0.7503 Acres Asset No. 170146	Stone Wave Limited P.O. Box 82576 Mombasa Directors: Abbasali A.G. Dossa Naushad A. Merali	153,500,000	The case was filed by KPA on 5 th October 2001 against Stonewave Limited, the Commissioner of Lands and the Chief Lands Registrar. Among other things, KPA seeks a permanent injunction to restrain the defendants from dealing with the land. The parcel was initially registered in the name of the General Manager East Africa Harbours but was cancelled and registered in the name of the Government before it was	ELC 499 of 2001 Kenya Ports Authority v Stonewave Limited & 2 Others. A.B. Patel & Patel Advocates

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
				<p>irregularly allocated to Stonewave Limited.</p> <p>This matter was consolidated with ELC No. 497 & 498 of 2001, heard and concluded. In its consolidated judgment delivered on 30th May 2023, the Environment and Land Court found in the Authority's favour with respect to XXVI/508 and Mombasa/Block XVII/112.</p> <p>However, Essam Properties Limited and Nile Limited under Stonewave Limited filed the Mombasa Court of Appeal Cases Nos. E086 and</p>	

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
				<p><i>E088 of 2023 – Stonewave Limited and Nile Limited and Essam Properties Limited –Vs- KPA & Others.</i></p> <p>KPA's Advocate has been instructed to resist the appeals and to file a Cross-appeal in respect of the parcel where judgment was entered in favour of Kilifi Gardens Limited.</p> <p>Given that it was one consolidated Decree issued, partial execution would be cumbersome and therefore, the Court not only granted</p>	

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
				<p>stay of execution of the decree but also restrained Kilifi Gardens Limited from dealing with the properties further.</p> <p>The Court of Appeal registry will likely fix the appeal for pre-trial directions</p>	
3	<p>Mombasa Block XLVII/113</p> <p>0.535 Acres</p> <p>Asset No. 170147</p>	<p>Supernova Properties P. O. Box 82077 Mombasa</p> <p>Directors Ashok L.Doshi Doshi Group of Companies</p>	65,000,000	<p>KPA filed suit for recovery of the parcel of land on 25th February 2005.</p> <p>An application filed by Supernova seeking to dismiss the suit for failure to serve summons was allowed by the Court, and the suit was struck out on 22nd April 2022. The suit as</p>	<p>MSA ELC No. 40 of 2005</p> <p>A.B. Patel & Patel Advocates</p>

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
				<p>against the National Land Commission and the Chief Land Registrar was also struck out despite there being defences on record.</p> <p>KPA appealed against the dismissal vide the Civil Appeal No. E004 of 2023 which is pending before the Court of Appeal.</p> <p>The suit had been consolidated with 3 others matters being: ELC Nos. 41, 42 & 43 of 2005 against TSS Grain Millers (XLVII/118); Santunia Limited (XLVII/114) and Freight Contractors</p>	

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
				Limited (XLVII/115). In the 3 matters, M/s Red Sparrow Ltd which asserts ownership over the parcels was joined as a Defendant in the suits. The 3 matters are scheduled for hearing on 12 th November 2024.	
4	Mombasa Block XLVII/114 0.363 Acres Asset No. 170148	Santunia Limited P. O. Box 87270 Mombasa	37,500,000	KPA filed this case on 25 th February 2005 against Santunia Limited, Commissioner of Lands and the Chief Land Registrar seeking to recover the land which was initially registered in the name of the General Manager East	ELC No. 42 of 2005 - KPA vs Santunia Limited & others. A.B. Patel & Patel Advocates.

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
				<p>African Railways and Harbours. The land was illegally alienated sometimes between 1997, 98 and 2002.</p> <p>M/s Red Sparrow Ltd which asserts ownership over the parcels was joined as a Defendant in the suit. The suit was consolidated with the other matters listed in Item 3 above. Parties have complied with pre-trial directions and the matter has been fixed for hearing on 12th November 2024.</p>	

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
5	Mombasa Block XLVII/115 0.422 Acres Asset No. 170149	Freight Constructors services Ltd	50,400,000	KPA filed this suit on 25 th February 2005. M/s. Red Sparrow Ltd which claims to have acquired ownership over the parcels has since been joined as a Defendant. Parties have complied with pretrial directions and the matter has been fixed for hearing on 12 th November 2024.	HCCC No.43 of 2005 - KPA vs Freight Constructors Services LTD & others. A.B. Patel & Patel Advocates
6	& Mombasa Block XLVII/116 0.639 Acres Asset No. 170150		76,000,000		

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
7	Mombasa Block XLVII/117 0.558 Acres Asset No. 170151	Nature System Limited P. O. Box 19002 Nairobi. Directors Abdul-Gaffur Abdulgani Pasta	63,000,000	The case was filed by KPA on 13 th June 2001 against Nature Systems Limited, Suntania Limited, Commissioner of Lands and Chief Land Registrar seeking to recover land. The Attorney General's office has never filed Defence in this matter. The matter is ongoing before the Environment and Land Court at Mombasa and is due to be allocated a date for hearing.	MSA ELC No. 496 of 2001 - Kenya Ports Authority v Nature Systems Limited & c Others A.B. Patel & Pate Advocates
8	Mombasa/Block/XLVII/118 0.929 Acres Asset No. 170152	TSS Grain Millers P. O. Box 85039 Mombasa	111,500,000	This suit was filed on the 21st February 2005 by KPA against Tahir Sheikh Said Grain Millers Ltd seeking recovery of illegally alienated parcel of land which was initially registered in	ELCC No. 41 of 2005. Kenya Ports Authority v Tahir Sheikh Said and 2 others

				<p>the name of the General Manager East African Railways and Harbors Cooperation. The suit property was later discreetly transferred to TSS Grain Millers in or about the years 1997, 1998 and or 1999.</p> <p>M/s. Red Sparrow Ltd which claims ownership of the property has been joined as a Defendant.</p> <p>The matter has been fixed for hearing on 12th November 2024.</p>	A.B. Patel & Patel Advocates
No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
9	Mombasa Block XLVII/179 0.0336 Ha	Akaba Investment P. O. Box 8997 Mombasa Directors Abdikarim Shigog	18,200,000	<p>This land (Mombasa Block XLVII/179) is an access road to KPA Pension properties formerly owned by KPA.</p> <p>KPA and KPA Pension Scheme commenced proceedings against Akaba Investment Limited where KPA claimed that it was the registered and beneficial owner of the fee simple interest in the property known as</p>	<p>ELC NO. 282 of 2018 - Kenya Ports Authority and Kenya Ports Authority Pension Scheme Suing through its trustees vs Akaba Investments Limited</p> <p>Cootow and Associates Advocates.</p>

				<p>MOMBASA/BLOCK XXIII/178 inherited from General Manager East African Railways & Harbors Administration and subsequently the East African Harbors Corporation which property was illegally subdivided and Plots No. MOMBASA/BLOCK XXIII/228, 229 & 230 illegally allocated to third parties who in turn transferred to Akaba Investments Limited & 8 others.</p> <p>The ELC in a ruling delivered on 27th February 2019, issued injunctory orders restraining the Defendants from developing, occupying and or in any manner dealing with the suit properties namely No. 228, 229 and 230 pending the hearing and determination of the suit.</p> <p>The aforesaid ruling is the subject of an appeal - <i>Civil Appeal No. 68 of 2019, Akaba Investment Limited vs. Kenya Ports Authority</i></p>
--	--	--	--	--

				and Another, which has not been prosecuted. In the meantime, the case before the ELC has been fixed for hearing on 27 th November 2024.	
10	Mombasa Block 1/469 0.2501 Ha	Hydery (P) Limited P. O. Box 82576 Mombasa Masumali G. Merali Naushad A. Merali	Not Revalued	Warehouse built on plot. Matter referred to Ethics & Anti-Corruption Commission for recovery action. KPA officer already recorded witness statement with EACC.	No court case has been filed. The EACC is still conducting investigations as communicated in its letter dated 5 th September 2024 Ref: EACC/MS.6/11/2/VOL IV (233)
11	Mombasa/Block XXVII/508 0.1278 Acres Asset No. 170126	Essam Properties P. O. Box 82578 Mombasa Directors Masumali G. Merali Naushad A. Merali	108,000,000	The case was filed by KPA on 5 th September 2002 against Essam Properties Limited, the Commissioner of Lands and Chief Land Registrar seeking to reclaim parcel of land. The matter went to full hearing and judgment delivered on 30 th May 2023, where the Environment and Land Court found in KPA's favour with respect to XXVI/508 and XLVII/112.	ELC 497 of 2001-Kenya Ports Authority v Essam Properties & 2 Others A.B. Patel & Patel Advocates Copy of the Judgment delivered on 24.9.2018.

				<p>Judgment was entered against the defendants jointly and severally declaring the excision of the KPA land in favour of the defendants null and void, merging of the land null and void, the action of the lands officials to allocate KPA land to third parties as ultra vires, that the allocation be revoked, and the land to revert to KPA. An injunction was also issued to permanently restrain the defendants from the parcels.</p> <p>The defendants have filed a Notices of Appeal and KPA's advocate has been instructed to resist the appeals and to file a Cross-appeal on the Authority's behalf.</p> <p>This matter was consolidated with ELC No. 498 & 499 of 2001.</p>	
12	<p>Mombasa/Block XXVI/928</p> <p>0.09 Ha</p>	<p>Kilifi Gardens Limited P. O. Box 82576 Mombasa Directors</p>	Not valued	<p>Case was filed by KPA on 13th June 2001 against Kilifi Gardens Limited, Commissioner of Lands and Chief Lands Registrar seeking</p>	<p>ELC No.498 of 2001</p> <p>Kenya Ports Authority VS Kilifi Gardens</p>

		Masumali G. Merali Naushad A. Merali		<p>recovery of the parcel of land.</p> <p>The case was consolidated and heard with ELC Nos.497 and 499 of 2001, and a consolidated judgment was delivered on 30th May 2023. The Environment and Land Court found in the Authority's favour with respect to XXVI/508 and XLVII/112. However, it was found in favour of Kilifi Gardens in XXVI/928. KPA has appealed specifically against the decision in respect of this property. The Court of Appeal has since stayed execution of the ELC judgment and restrained any further dealings in the property.</p>	Limited, Commissioner of lands. A.B. Patel & Patel Advocates Copy of the Judgment delivered on 24.9.2018.
13	Mombasa/Block XXVI/1001 Approx. 0.1805 Ha	Wayland Limited P. O. Box 12416 Nairobi	37,000,000	The case was filed by KPA against Wayland Limited, Commissioner of Lands and Chief Land Registrar seeking to reclaim parcel of land Mombasa/Block XXVI/1000 and	MSA ELC CAS No. 211 of 2018 (Originally HCCC No. 500 c 2001) - Kenya Ports Authority v Wayland Ltd & others

				Mombasa/Block XXVI/1001. KPA was advised against proceeding with this particular case as a Decree in its favor was issued in ELC No. 245 of 2004 in respect of the same property which ought to have been executed and as such property reverted back to KPA. The Court has marked this matter as settled .	A.B. Patel & Patel Advocate Copy of the Judgment delivered on 24.9.2018.
14	Mombasa/Block XLVII/149 Approx. 0.22 Ha	Osman Taraab and Zera Taraab	61,500,000	Plot created out of an access road as depicted in the excerpt of the Mombasa County Cadastre. Matter was referred to Ethics & Anti-Corruption Commission for recovery action. KPA officer already recorded witness statement with EACC.	No court case filed. The EACC is still conducting investigations and communicated in its letter dated 5 th September 2024 Re EACC/MS.6/11/2/VOL IV (233)
15	XLVIII/150 Approx. 0.156 Ha Asset No. 170158	Sunnex Ent. Limited P. O. Box 82077 Mombasa Directors	55,000,000	The plot is "created" off the access road to Dockyard. Not just the road reserve but part of the road.	No court case filed. Matter referred to Ethics & Anti-Corruption Commission for recovery action

		Ashok L. Doshi Doshi Group of Companies			
16	XLVII/151 Approx. 0.450 Ha	Venezia Ent. Limited P. O. Box 86029 Mombasa Directors Abdul-Gaffur Abdulgani Pasta	37,500,000	Plot created from road reserve at either side of road at Dockyard and adjacent to Port fence. No development. Matter referred to the EACC for recovery action.	No court case has been filed. The EACC is still conducting investigations as communicated in its letter dated 5 th September 2024 Ref: EACC/MS.6/11/2/VOL IV (233)
17	XLVII/152 Approx. 0.450 Ha		37,500,000		
18	XLVII/153 Approx. 0.450 Ha		37,500,000		
19	XLVII/154 Approx. 0.450 Ha		37,500,000		
20	XLVII/155 Approx. 0.068 Ha Asset No. 140154	Oceanfreight (MSC) P. O. Box 80637 Mombasa	161,200,000	Plot created out of a road reserve in front of plot XLVII/84 belonging to KPA and on long term lease to Ocean freight EA Ltd. The plot cuts off plot 84's frontage and access to Moi Avenue.	No court case has been filed. Matter referred to Ethics & Anti-Corruption Commission for recovery action

21	XLVII/162 Approx. 0.0451 Ha	Vanezia Ent. Limited P. O. Box 86029 Mombasa. Directors Abdul-Gaffur Abdulgani Pasta	37,500,000	Plot created from railway reserve opposite Bandari College.	The EACC is still conducting investigations and has communicated in its letter dated 5 th September 2024 Ref: EACC/MS.6/11/2/VOL IV (233)
22	XLVII/163 Approx. 0.0531 Ha	Osman Hajj Talab & Zera Osman Talab P. O. Box 98142 Mombasa	60,000,000	Plot created from railway reserve opposite Bandari College. Boundary wall and buildings.	The EACC has concluded investigations and the matter is pending filing of a suit for recovery and has communicated in its letter dated 5 th September 2024 Ref: EACC/MS.6/11/2/VOL IV (233)
23	XLVII/164 Approx. 0.500 Ha	As above	40,000,000	As above	The EACC has concluded investigations and the matter is pending filing of a suit for recovery and has communicated in its letter dated 5 th September 2024 Ref: EACC/MS.6/11/2/VOL IV (233)

No.	Plot No.	Illegally Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
24	XLVII/165 Approx. 0.0496 Ha	As above	20,000,000	As above	The EACC has concluded investigations and the matter is pending filing of a suit for recovery as communicated in its letter dated 5 th September 2024 Ref: EACC/MS.6/11/2/VOL IV (233)
25	XLVII/166 Approx. 0.0497 Ha	Joseph Ngetich P. O. Box Mombasa	20,000,000	As above	The EACC has concluded investigations and the matter is pending filing of a suit for recovery as communicated in its letter dated 5 th September 2024 Ref: EACC/MS.6/11/2/VOL IV (233)
26	XLVII/167 Approx. 0.0502 Ha	Lumda Ent. P. O. Box 20712 Nairobi.	22,000,000	As above	The EACC has concluded investigations and the matter is pending filing

		Mwenda Mbogori Lucy G. Mwenda			of a suit for recovery as communicated in its letter date 5 th September 2024 Ref: EACC/MS.6/11/2/VOL IV (233)
27	XLVII/168 Approx. 0.0501 Ha	Gladys Tesot	40,000,000	As above	The EACC has concluded investigations and the matter is pending filing of a suit for recovery as communicated in its letter date 5 th September 2024 Ref: EACC/MS.6/11/2/VOL IV (233)
28	XLVII/169 Approx. 0.032 Ha	Gladys Tesot	12,800,000	As above. Plot without access.	No court case has been filed. The EACC is still conducting investigations and communicated in its letter date 5 th September 2024 Ref: EACC/MS.6/11/2/VOL IV (233)

29	Mombasa/Block I/528 0.1100 Ha	Chembe Holdings and Musk Deer Daniel N Kihiko	Not Revalued	EACC filed this suit on 10 th March 2009 for recovery of KPA's parcels of land.	ELC Case No. 70 of 2009/ ELC Suit No. 71 of 2009 KACC VS Chembe Holdings LTD & 2 others.
	Mombasa/Block I/529 0.5059 Ha	Abbas M Yusuf		The case has been set for hearing on 19 th November 2024.	
		TOTAL	1,487,600,000		

682. With respect to the Environment & Land Court Civil Suit No. 245 of 2004; Kenya Ports Authority Vs. G. Wayumba (Geometer Surveys Ltd), Commissioner of Lands, District Land Registrar Mombasa, Wayland Ltd, Essam Properties Ltd and Kilifi Gardens Ltd, KPA had on diverse dates between 1992 – 2002 engaged Geometer Surveys Limited to formulate, carry out and implement cadastral survey and process title deeds for KPA's various parcels of land. However, the said surveyor in breach of his duties and without consultation with KPA, and in collusion with the Land Registry, unlawfully, fraudulently dealt with KPA's various parcels of land. Therefore, KPA filed the referenced suit.

683. The ELC entered judgement in favour of KPA on 24th September 2018 declaring that excision of portions from KPAs original parcels by creating new ones in the names of private parties was null and void. The Court ordered for the excisions to be revoked and for rectification of the register accordingly. An application for a stay of the decision and setting it aside has been filed by the defendants.

684. Following the delivery of the judgement, two parties namely Essam Properties Limited and Kilifi Gardens Limited applied to have the judgement in respect of the Plots No. MOMBASA/BLOCK XXVI/928 and MOMBASA/BLOCK XXVI/508 stayed on the ground that the Authority had earlier filed HCCC No. 497 of 2001 – Kenya Ports Authority vs Essam Properties Limited & 2 Others and HCCC No. 498 of 2001 – Kenya Ports Authority vs Kilifi Gardens Limited & 2 Others which were filed earlier and were still pending determination before the Court. The two private parties successfully argued that the judgement was sub-judice the aforementioned cases.

685. After this judgement and the subsequent Ruling, KPA is therefore pursuing the recovery of title with respect to Mombasa/Block/XXVI/1001. In respect to

Msa/Blk/XXVII/508 and Msa/Blk/XXVI/928, the Authority is still engaged in court proceedings after the judgment was declared sub-judice.

Committee observations

686. The Committee observed from the explanation of the Accounting Officer at the time of examination that there was a high risk of KPA losing a big part of their land to squatters and third parties who were currently occupying.
687. The Committee was concerned with the laxity of the Authority for failing to taking measures to secure the Authority's land such as placing caveats on titles of the contested parcels.
688. The Committee noted that there was an external audit being carried out by KPMG audit firm on the status of the KPA lands.

Committee recommendation

689. The Committee directs that within three (3) months of adoption of this report, the Accounting Officer to place caveats on the titles of all land owned by KPA and submit a status report of the same to the OAG.
690. Further, the Accounting Officer should include all parcels of land owned by KPA in the financial statements as disclosures regardless of their status.

8.2. Land Without Title Documents

691. As reported in the previous year, included in the property, plant and equipment balance of Kshs.267,063,658,000 as at 30 June, 2020 are land and buildings valued at Kshs.75,097,862,000 owned by the Authority. Documents provided for audit review indicated that the Authority did not have title deeds for seventeen (17) parcels of land valued at Kshs.2,909,300,000. Although the Management engaged a private consultant in May, 2017 to conduct verification of all its properties, the final report of the consultant was not produced for audit review. Under the circumstances, the ownership and rights and obligations of land valued at Kshs.2,909,300,000 as at 30 June, 2020 could not be confirmed.

Management response

692. The management stated that some plots were grabbed from KPA and have cases in court while others were consolidated/subdivided leading to new titles.

693. For the parcels of land without titles, actions to secure new titles are underway. KPA proceeded and undertook official searches for the plots. KPA also filed affidavits for issuance of provisional titles. For two plots MSA/BLOCK/XLVIII/131 and MSA/BLOCK/I/315 the green cards were missing in the Kalamazoo binders and in the loss cards. KPA could not lodge searches. However, the Land Registrar has officially been requested to avail the files. KPA also filed cautions to protect the interests of the Authority.
694. On 26th July 2019 the following three plots were gazetted and KPA has contacted the Land Registrar to issue new titles after the expiry of 60 days as stipulated in the Gazette notice. Details of the plots and gazette notice are shown below.
- a) Notice No 6899 for MSA/Block/XLVIII/131
 - b) Notice No 6901 for MSA/Block/I/315
 - c) Notice No 6902 for MSA/Block/XLVIII/156
695. Out of the three parcels mentioned above, KPA has succeeded in obtaining titles for the following two plots: - MSA/Block/XLVIII/131 and MSA/Block/XLVIII/156, copies of the titles submitted.
696. It is to be noted that out of the 17 parcels reported to be without titles, 6 have titles. The remaining 7 parcels are those that were grabbed by third parties. The same were referred to the Ethics and Anti-corruption Commission for recovery. For parcel No. MSA/BLOCK 1/358, KPA is gathering ownership records that will enable writing to the Lands Registrar to issue title to the Authority.
697. Parcel Nos. 77/78/79, were long consolidated into one parcel and later sub divided into two, creating MSA/BLOCK/XLVII/173 and MSA/BLOCK/XLVII/174. Titles for the two parcels submitted. Internal investigations are ongoing with regards to parcel Number MSA/BLOCK XLVII/106 with the aim of engaging the Lands Registrar for the title.

Further details of the status of the 17 parcels are as shown in the table below:

No	Description	Asset No	Revalued Amount	Value during Audit	Status
1	Plot No. MSA/BLOCK 1/315- 3.13 ACRES SHIMANZI	140200	68,000,000.00	59,000,000.00	Title under process at the Lands Registrar's office.
2	MSA/BLOCK 1/358 0.389 ACRES SHIMANZI	140229	10,000,000.00	60,200,000.00	Title not available
3	L.R. No MI/BLOCK 1/14R 7.29 ACRES (KHL) SHIMANZI	140230	180,000,000.00	180,000,000.00	This parcel is part of plot MSA/BLOCK1/490,
4	Plot No. MSA/BLOCK XLVIII/131-1.796HA- MBARAKI	140156	200,000,000.00	541,800,000.00	Title available. Copy submitted.
5	Plot No. MSA/MBARAKI/BLO CK XLVIII/156- 0.3024HA	140157	30,000,000.00	114,000,000.00	Title available. Copy submitted.
7	MSA BLOCK XLVIII/189-0.2017 HA MBARAKI	140235	25,500,000.00	24,100,000.00	Title available. Copy submitted.
8	PLOT NO. XLVII/III - 0.2849 ACRES- PUTNEY BRIDGE	170111	35,190,000.00	55,000,000.00	Land grabbed, matter with EACC for recovery.
9	PLOT NO. XLVIII/121 -0.4571 Hectares- MBARAKI CLUB	170137	48,900,000.00	106,000,000.00	Land belongs to KRC: KPA is a lessee.
10	PLOT NO. XLVIII/122 -0.2627 ACRES- MBARAKI CLUB	170138	20,000,000.00	25,000,000.00	Land belongs to KRC; KPA is a lessee.

No	Description	Asset No	Revalued Amount	Value during Audit	Status
11	PLOT NO. BLK NO. XLVII/112 -0.7503 ACR BANDARI/W.HOUS	170146	80,000,000.00	153,500,000.00	Land grabbed, matter with EACC for recovery.
12	PL NO.BLK XLVII/113 -0.2165 ACR- BANDARI/WHITE HSE	170147	31,000,000.00	65,000,000.00	Land grabbed, matter with EACC for recovery.
13	PLOT NO. BLKXLVII/114/14 - 0.1496 ACR- BANDARI/WHITE HS	170148	19,800,000.00	37,500,000.00	Land grabbed, matter with EACC for recovery.
14	PLOT NO. BLK XLVII/117 -0.2258 ACR- BANDARI/WHITE HSE	170151	22,900,000.00	63,000,000.00	Land grabbed, matter with EACC for recovery.
15	PLOT NO. BLK XLVII/118 -0.3759 ACR- BANDARI/WHITE HSE	170152	51,100,000.00	111,500,000.00	Land grabbed, matter with EACC for recovery.
16	PLOT NO. XLVII 77/78/79 -2.4071 ACR-B/ COLLEGE	140234	213,500,000.00	211,000,000.00	The three plots were consolidated into one parcel and later sub divided into two plots namely MSA/BLOCK XLVII/173 and 174. Titles submitted.

No	Description	Asset No	Revalued Amount	Value during Audit	Status
No	Description	Asset No	Revalued Amount	Value during Audit	Status
17	Plot No. MSA/BLOCK XLVII/106-1.3946 HA LIWATONI	170269	59,000,000.00	154,400,000.00	Internal investigations are ongoing.

698. KPA has encountered several challenges in the pursuit of its irregularly alienated land. Some of the challenges have been listed below.

- 1) Lack of Cooperation from the Land Registry.
- 2) Adverse legal advice by the Commissioner of Lands.
- 3) Loss of records in the Land registry/missing record cards.
- 4) Lack of implementation of the recommendations made in the Ndung'u report which was a government intervention.
- 5) Difficulty in service of court pleadings due lack of particulars of the allottees.
- 6) Conflict of opinion between the Authority and government advisers. The defenses by the beneficiaries of the irregular allocation and the Attorney General on behalf of Commissioner of Lands and the Chief Land Registrar appear geared towards supporting the illegal and irregular allocation of the contentious public lands to private companies, to the detriment of the Authority.
- 7) Delay in hearing of court cases due to myriads of reasons including:
 - (i) A number of interlocutory applications were filed in the cases and their conclusions took time. These applications must be heard before hearing of the main suit;
 - (ii) In the years under reference (2001 to 2012) the court diaries used to fill up very early in the year and getting hearing dates was a challenge.

(iii) Disappearance of court files from the court registries necessitating reconstruction of skeleton files. Leave of the court is required in such instances.

(iv) Several Lead counsels leaving law firms and in one instance, demise of the lead counsel.

699. Management wishes to confirm that they used their best efforts to reclaim the lands. These efforts included seeking various interventions from the government which unfortunately did not yield the desired results.

700. On the consultant, M/s KPMG was contracted by Kenya Ports Authority vide tender number KPA/122/2015-16/MD to conduct a forensic audit of the Authority's land and property on 19th May 2017. This was a recommendation by the Board Audit & Risk Committee in its 43rd meeting held on 11th March 2016 which was adopted by the full Board.

701. An inception land audit report was tabled to ExCom on 9th October 2017 where KPMG had identified land references and leased properties relating to the Authority. In addition, M/s KPMG sought to subcontract the services of a professional surveyor and valuer to confirm boundaries and acreage as well as market rental and values of the leased properties.

702. Due to budget constraints the assignment stalled in February 2018 and the engagement of the subcontractors for valuation and survey services was not undertaken then. Deed of Contract Amendment was signed between M/s KPMG and KPA; for the resumption of the exercise and inclusion of the subcontractors for the survey and valuation.

Committee observations

703. The Committee observed that there was a high risk of KPA losing a big part of their land to squatters and third parties who were currently occupying.

704. The Committee was concerned with the laxity of the Authority for failing to taking measures to secure the Authority's land such as placing caveats on titles of the contested parcels.

705. The Committee noted that there was an external audit being carried out by KPMG audit firm on the status of the KPA lands and the Managing Director pledged to ensure the process was completed and report implemented.

Committee recommendation

706. The Committee recommends that within three (3) months upon adoption of this report, the Accounting Officer should place caveats on the titles of all land owned by KPA and submit a status report of the same within to the OAG.
707. Further, the Accounting Officer should include all parcels of land owned by KPA in the financial statements in the disclosures regardless of their status.

8.3. Inclusion of Assets Donated to the Bandari Maritime College

708. The statement of financial position reflects property, plant and equipment balance of Kshs.267,063,657,887 as at 30 June, 2020, out of which Kshs.1,747,879,865 is in respect of assets held and used by Bandari Maritime Academy. The Authority indicated that these assets were disclosed in their books since ownership had not been transferred to the academy. Disclosing these assets in the Authority's books is contrary to substance over form concept of accounting since the Academy has possession and rights and obligations to the assets that had been ceded to the Academy. The assets are not available for use by the Authority, hence the presentation and disclosure are contrary to International Accounting Standards No.16 paragraph 6 which defines property, plant and equipment as tangible items that: (a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes. Consequently, the accuracy and rights and obligations of property plant and equipment of Kshs.1,747,879,865 as at 30 June, 2020 could not be confirmed.

Management response

709. The management stated that at the end of FY 2019/20, the process of transferring all the functions to Bandari Maritime Academy (BMA) was not yet finalized. Therefore, KPA could not remove the assets from the books of accounts until appropriate approvals from the Cabinet, Ministries and the Board were received.
710. In the year 2020/21, assets amounting to Kshs 1.67 Billion were transferred to BMA after factoring in the annual depreciation, and the asset register was updated accordingly.

Committee observation

711. The Committee observed from the explanation of the Accounting Officer at the time of examination that the assets amounting to Kshs 1.67 billion had been transferred to Bandari Maritime Academy, and the asset register had been updated in the subsequent year.
712. The Committee observes that since the assets amounting to Kshs 1.67 billion were transferred and the asset register updated, the matter stands resolved.

8.4. Land and Buildings - Impairment

713. Note 11 to the financial statements reflects impairment totaling Kshs.316,910,000 as at 30 June, 2020, out of which Kshs.199,819,000 is in respect of land and buildings. Available documents and information indicated that out of the twenty-nine (29) properties impaired, nineteen (19) pieces of land had been encroached by informal settlers and impairment of Kshs.187,069,550 provided as a percentage of Kshs.1,167,442,445, which was revalued to Kshs.5,197,500,000. However, after the assets revaluation, the impairment was still based on the original cost of the assets of Kshs.1,167,442,445. Therefore, the impairment is understated by Kshs.688,820,450. Under the circumstances, the accuracy of land and buildings impairment figure of Kshs.187,069,550 as at 30 June, 2020 could not be confirmed.

Management response

714. The management stated that the revaluation exercise was undertaken by M/s Sec & M Ltd in FY2018-2019. Land and buildings revaluation amounts were carried at cost less impairment losses. Therefore, the management could not have gone ahead to impair whereas the same had already been factored in their values. The Kshs 187,069,550 has since been reversed vide document nos. 9086888 and 9086889. the list with details of the parcels of land and impairment amounts as well as the executive summary of the asset valuation report were available.

Committee observation

715. The Committee observed from the explanation of the Accounting Officer at the time of examination that the amount in question had been reversed after the valuation was undertaken. However, the Committee further noted that the lands in question were occupied by squatters and the Authority was yet to place caveats on the titles of the said lands.
716. The Committee observes that since the amount in question was reversed hence a reconciliation on the impairment done, the matter stands resolved

Committee recommendations

717. The Committee directs that within three (3) months upon adoption of this report, the Accounting Officer to place caveats on the titles of all land owned by KPA that is threatened by occupation of squatters and submit a status report of the same to the OAG.

9. Dividends Payable Variance

718. The statement of financial position reflects dividends payables of Kshs.4,950,000,000 as at 30 June, 2020. Audit review of the information provided in Note 38 to the financial statements indicated that the Authority accrued dividends of Kshs.516,130,000, Kshs.731,289,000, Kshs.308,992,000 and Kshs.18,000,000,000 for financial years 2017/2018, 2018/2019, 2019/2020 and special dividends all totaling Kshs.19,556,411,000. Further, it is disclosed in the Note that the Authority paid dividends of Kshs.13,566,130,000, resulting in dividends payable balance of Kshs.5,990,281,000. However, only Kshs.4,950,000,000 has been reflected in the statement of financial position as a payable, resulting in a variance Kshs.1,040,281,000 which has not been explained nor reconciled. Consequently, the accuracy of dividend payable of Kshs.4,950,000,000 as at 30 June, 2020 could not be confirmed.

Management response

719. The management stated that as at 30 June 2020, the audit certificates for FYs 2018/2019 and 2019/2020 were yet to be issued by the auditor hence the proposed dividends of Kshs 1,040,281,000 were not recognized as a liability on the face of the statement of financial position but disclosed in the notes to the financial statements.

720. As per the Authority's dividends policy that was availed during the audit, dividends are recognized upon completion of the statutory audit and issuance of the Audit Certificate. Further, IAS 1 permits entities to disclose dividends either on the face of the statement of changes in equity or in the notes.

721. Upon receipt of the audit certificate, the Authority remitted the dividends equivalent to 7.5% of its declared Profit after Tax to the National Treasury after its waiver appeal was not approved. Attached is a copy of the Dividends policy, correspondence and remittances to the National Treasury submitted.

722. On the special dividends, the Authority had no option but to comply and remit the funds to the National Treasury as per the directive. Kshs 13,050,000,000 was

paid in FY 2019/2020, and Kshs 4,950,000,000 was outstanding as at 30 June 2020 and reported as a liability. The amount was paid in FY2020/2021.

Committee observation

723. The Committee observed at the time of audit that the management paid the dividends as per the dividend policy, and the same was verified by OAG.
724. The Committee observes that since the dividends were paid as per the dividend policy, the matter stands resolved.

10. Irregular Payment of Acting Allowances

725. As disclosed under Note 9 to the financial statements, the statement of profit or loss and other comprehensive income reflects staff allowances of Kshs.2,228,097,000. As a result, a total of Kshs.1,314,145 was paid to staff as monthly acting allowances beyond the six months in the year under review. A review of human resource records indicated that eight (8) employees had been serving in acting positions for more than six (6) months, contrary to Paragraph B11(f)I of the Kenya Ports Authority Human Resources Manual, 2017, which states that 'acting appointments shall be limited to six months at any given time'. Consequently, Management is in breach of the law.

Management response

726. The management stated that the eight employees had continued to act while awaiting the substantive filling of the positions through a competitive interview process which was at the final stages at Board level. The observation that the acting appointments had gone on for more than six (6) months was attributed to diverse factors which include:
- i. The recruitment process being handled externally by a consultant and was in two phases, that is, preliminary interviews by Deloitte and the second level of the interviews by the Board of Directors.
 - ii. The substantial number of applications that was being handled was for more than fifty (50) vacant positions.
 - iii. The general length of period it took to fill the posts from the time the positions fell vacant to engagement of the successful candidate after the external process of recruitment.
727. At its 339th Regular Board meeting held on 8th February 2018, the Board gave its approval for Management to advertise some vacant positions at grade HE2

(Heads of Department), HM1 (Principal Officers) and HM2 (Senior Officers) and approved appointment of qualified staff to fill in other vacant positions through succession management.

728. Subsequently, the Authority contracted Deloitte to facilitate the recruitment and selection process, and as the plans for advertising and recruitment were going on there was a communication from SCAC to freeze filling of vacant positions until the Authority's Human Resource policy instruments were aligned with the guidelines issued by the Public Service Commission.

729. Following changes made to the leadership of KPA in the hiring of a new Managing Director and changes in membership of the Board in 2018/2019, it was resolved that all vacant positions at Grades HE2, HM1, and HM2 be advertised externally for competitive filling. The vacant positions were advertised in February 2019.

730. The terms of reference for the consultant undertaking the recruitment for KPA were as indicated below:

- Advertise approved vacant positions on behalf of KPA;
- Conduct recruitment on behalf of KPA;
- Identify the method of pre-screening based on inherent requirements of the job;
- Shortlist and interview candidates from applications received following the press advertisement;
- Submit a comprehensive report on recruitment process including long list and shortlist of candidates;
- Conduct psychometric interview for the candidates, where necessary;
- Find matched candidates as per job specifications;
- Conduct reference checks on the final agreed candidate(s) and avail the same to the Authority; and
- Forward the recommended candidates for consideration by KPA.

Recruitment Process

No.	Activity	Date
1	339 th Regular Board meeting held on 8 th February 2018 and approval granted to advertise vacant positions at Grade HE2 (Heads of Department), HM1 (Principal Officers) and HM2 (Senior Officers)	January 2019

No.	Activity	Date
2	Advertisement of vacancies	12 th -26 th February 2019 – 2 weeks-
3	Submission of Inception Report - Deloitte Project plan indicated that the search for the right candidates would take 16 weeks.	February 2019
4	Interviews for 5 Head of Department roles.	Preliminary Interviews by Deloitte and final interviews by KPA Senior Management were held between 20 th March – 7 th June 2019
5	Interviews for 32 Senior Officers Grade HM2 were held.	Screening interviews held between 1 st May - 28 th June 2019 Final interviews with KPA Management held between 19 th June to 10 th July 2019
6	Interviews for 4 Principal Roles Grade HM1 & 1 Senior Medical Officer Grade HM2	Preliminary Interviews by Deloitte and final interviews by KPA Senior Management held between 26 th March and 5 th September 2019
7	Interviews for 11 Principal Roles Grade HM1	Preliminary Interviews by Deloitte and final interviews by KPA Senior Management held between 26 th March and 15 th October 2019

731. The recruitment for the 53 vacant positions was undertaken in a period of nine (9) months i.e. between February and October 2019 due to the aforementioned reasons.

Committee observations

732. The Committee observed from the explanation of the Accounting Officer at the time of examination that the current Human Resource Policy had a clause that allowed for an extension of the acting period beyond six months. Further, the management stated that all the officers who were acting in the position had been absorbed.

733. The Committee observes that since the extension of the acting period for officers was provided for in the Human Resource Policy, the matter stands resolved.

11. Hospital/Referral Bills Not Supported by Any Policy

734. Disclosed also under Note 9 to the financial statements are hospital/referral bills of Kshs.564,015,000. The following observations were made:

- i. As previously reported, the Authority through Circular Ref HR/1/6/66 dated 01 February, 2018 suspended the application of provisions under Paragraph E.1(b) of the Kenya Ports Authority Human Resources Manual, 2017 which requires staff medical benefits to be subject to certain limits set by the Board from time to time, thus allowing medical benefits for staff and their dependents without any limit. This resulted in one employee's dependant accumulating a medical bill of Kshs.46,868,614, which according to Circular has to be settled by the Authority. However, there was no evidence that the authority obtained Ministerial approval for such major alterations in the staff medical benefit as required by Section 14 of Kenya Ports Authority Act, CAP 391 which states that, 'The Minister may (c) approve any major alterations in salaries, wages or other terms and conditions of service of employees.'
- ii. Medical records availed for audit review indicated that the Authority had 6,583 principal members, 4,632 spouses and 13,379 issues or a total of 24,594 members as at 30 June, 2020. However, the Management through the same Circular suspended the provision of Paragraph E.1(a) and (f) of the Kenya Ports Authority Human Resource Manual 2017 which requires an employee to be eligible for medical treatment for self, spouse below the age of sixty (60) years, and a maximum of four (4) children up to the age of

22 years. This resulted to employees registering up to eleven (11) children with an overall figure of 1,067 dependants in excess of the 23,822 expected. The records further indicated that a total of seventy-three (73) spouses above the age of sixty years were registered as dependants. Medical expenses of Kshs.4,978,326 was incurred in respect of twenty-eight (28) spouses above the age of sixty years while Kshs.798,974 was incurred in respect of twelve (12) issues above the age of 22 years. However, Ministerial approval of suspension of the provisions of the Policy Manual was not availed for audit review contrary to Section 11(c) of the Kenya Ports Authority Act, CAP 391 which gives powers to the Minister to approve any major alterations in salaries, wages or other terms and conditions of service of employees.

- iii. Included in the hospital/referrals bills of Kshs.104,384,460 are private inpatient fees for employees in management positions and their dependants. However, details of employees who are eligible for private hospital services were not availed for audit verification.

735. Consequently, Management is in breach of the law.

Management response

736. The management stated that during the audit period, Kenya Ports Authority offered medical services through its Medical Services Department. This was fully funded by the Authority.

i. Irregular Registration of Dependents

737. Paragraph E.1(a) and (f) of the Kenya Ports Authority Human Resource Manual 2017 for medical treatment for self, spouse below the age of sixty (60) years, and a maximum of four (4) children up to the age of 22 years only. This change was an emotive issue leading to the suspension of the clauses in the Human Resource Manual 2017 and deferment in the CBA 2018 – 2019 and 2020 -2023. The matters were still under negotiation. Hence the registration is not irregular.

ii. Unapproved Private Inpatient Expenses

738. All KPA employees are admitted to private hospitals when needing in-patient care. The room provision in these hospitals is as per the grade of the employee.

NEW GRADE	WARD CATEGORY
-----------	---------------

HE 1	Private Suite
HE 2	Private Ward
HM 1	
HM 2	Semi Private
HM 3	
HM 4	
HG 1	General Ward
HG 2	
HG 3	
HG 4	

Private hospitals are pre-qualified to provide medical services through a procurement process. the management uses government institutions for some services.

739. Going forward, the Authority implemented the medical cover with limits since January 2023. In this cover;

- 1) Limits have been set for the different groups, per family per year.
- 2) There is no upper age for a spouse as the issue of limits already controls expenditure and employees are still responsible for their spouses despite their age.
- 3) The number of children is not limited, and the family works with the limit set for them.
- 4) The age of children has been defined and the Authority will continue to provide medical services to over age children if they are perpetual dependents.

Committee observations

740. The Committee observed from the explanation of the Accounting Officer at the time of examination that the payment of hospital/referral bills was as per the 2018 Collective Bargaining Agreement, which did not have a cap on the amount

the entity could spend on medical expenses for each employee. Further, the number of dependents was not specified in the CBA.

741. The Committee observed that the Management of KPA had reviewed their medical policy and set limits to be spent for each employee, and the number of dependents was clearly stipulated.
742. The Committee noted that the lack of capping on the amount to be spent might have led to abuse. However, the Committee observed that this has since been addressed with the review of the medical policy.
743. The Committee observed that the management had provided documents detailing the employees who were qualified to visit a private hospital.
744. The Committee observes that since the medical policy was reviewed to improve its operation, the matter stands resolved.

12. Operational/Running Supplies

745. Included in the operational expenses of Kshs.6,852,267,000 is an amount of Kshs.749,801,000 in respect of operational/running supplies. Documents provided for audit review indicated that the Authority varied contracts with nine (9) cleaning service providers as a result of additional cleaning areas that were omitted during the procurement process. Out of the nine (9) contracts, seven (7) were varied by more than 25% of the original contract prices, resulting in additional cost of Kshs.37,884,242. This is contrary to Section 139(6) of the Public Procurement and Asset Disposal Act, 2015 which states that, 'where variations result in an increment of the contract price by more than twenty-five percent, such variations shall be tendered for separately.' Consequently, Management is in breach of the law.

Management response

746. The management stated that the additional scope of work was in compliance with section 103 (2) (d) of the Public Procurement Act, 2015 which states that the procuring entity, having procured goods, technology or services from a supplier or contractor determines that additional supplies shall be procured from that supplier or contractor for reasons of standardization or for the need of compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity.

747. However, the award to the firms was cancelled arising from an appeal that was filed with the Public Procurement Oversight Authority by the firms that lost out. The situation was further exacerbated through a court injunction awarded in favor of the firms who challenged the cancellation of the awards. This court order granted the firms that were supposed to vacate ground authority to continue offering services albeit with limited scope as opposed to what had been tendered while awaiting the court's verdict.
748. The additional works in the areas/zones referred to were inevitable due to the expansion of the Port infrastructure and buildings. In addition, there were manpower shortages (especially for messenger cadre) which necessitates most offices to be cleaned by firms that were offering services within the specific areas.
749. Arising from the above legal action and the shortage of messengers to undertake the cleaning services, the development necessitated action for urgent quotations in line with section 103 (2) (d) of the Public Procurement and Disposal Act, 2015 for additional works to address the immediate and urgent need for continuity of the required cleaning services.

Committee observations

750. The Committee observed from the explanation of the Accounting officer at the time of examination that there was a court injunction stopping the award of the contract that led to a delay in the commencement of the contract for the cleaning service.
751. The Committee observed that the management issued a one-year contract to the contractor undertaking the works under the previous contract to undertake cleaning works during the period of suspension of the award of the new contract.
752. Further, the Committee observed that when the injunction was lifted, the Authority proceeded to grant a three-year contract to another firm.
753. The committee observes that the matter stands resolved.

Committee recommendation

754. The Committee reprimands the Accounting Officer for breaching section 139 of the Public Procurement and Asset Disposal Act and directs that the Accounting Officer should henceforth ensure that procurement procedures are in line with the Act.

13. Non-Compliance with the National Cohesion and Integration Act, 2008 on Ethnic Composition

755. The biodata presented for audit review as at 30 June, 2020 indicated that the Authority had 2,156 employees in management positions and 4,499 on permanent terms, giving a total to 6,655. Included in management positions are members of one ethnic group with a total of 1,790 (39.79%), contrary to Section 7(2) of the National Cohesion and Integration Act, 2008 which states that 'no public establishment shall have more than one third of its staff from the same ethnic community.' Consequently, Management is in breach of the law.

Management response

756. The management stated that the Authority is currently renewing efforts to ensure compliance with Section 7(2) of the National Cohesion and Integration Act, 2008. The current staff numbers and composition in terms of ethnic representation could be historical in nature, that is, the dominant community may over time have had more representation especially before the Act came into existence in 2008.

757. From the ethnic composition analysis of the Authority's employees tabulated below, the Mijikenda have for the past 3 years reduced from 35.69% (2019) to 34.44% (2022) while employees from the Taita, Teso, Pokomo, Kenyan Somali, Orma and Bajuni tribes have increased.

758. The Authority has made efforts to improve the numbers by actively hiring from under-represented communities hence reducing the numbers of the dominant community to ensure that in the long run there is compliance with the Constitution. For illustration, during the three most recent mass recruitments the Authority engaged 27 members of the Gabbra, Borana and Rendile ethnic groups which previously had very low representation in the Authority. It should also be appreciated that rectifying the situation to ensure the numbers conform to the Act will take some time but is achievable and the Authority endeavors to comply with the Act.

759. The Authority is actively increasing its efforts to comply with the Law, as demonstrated by the fact that out of 297 staff recruited in 2021/2022 FY, only 36 (12%) were from the Mijikenda Community.

Committee observation

760. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had a number of officers from the minority community employed in the subsequent recruitment process.

761. The Committee observes that since the Accounting Officer has endeavored to comply with Article 130(2) of the Constitution on reflection of regional and

ethnic diversity in public entities and the National Cohesion and Integration Act, Cap 7N, the matter stands resolved.

Committee recommendation

762. The Committee recommends that the OAG should endeavor to include a paragraph on the ethnic diversity of officers in public entities in future audit cycles.

14. Non-Compliance with the Public Service Commission Human Resource Policies and Procedures Manual, 2016 - Over Commitment of Salary –

763. Payroll records availed for audit review indicated that in the month of June, 2020 the Authority paid basic salary to one hundred and sixteen (116) employees who had committed their salaries beyond two-thirds of the basic salary. This is contrary to Section C.1(3) of the Public Service Commission Human Resource Policies and Procedures Manual, 2016 which states that, 'a public officer shall not over-commit their salaries beyond two thirds (2/3) of their basic salaries and Heads of Human Resource Units should ensure compliance'. Consequently, Management is in breach of the law.

Management response

764. The management stated that the over commitment of salary was caused by various reasons including the following:

- i. Court Attachments
- ii. Staff on long training (20% of basic salary and lose of all allowances for oversees & 10% of basic salary and lose of all allowances- as per HR Manual 2017.
- iii. Staff retiring in the month and salary is prorated.
- iv. Medical bills
- v. Increase of rent for Staff Houses
- vi. Staff who have increased their Shares.
- vii. Staff on sick leave/Hospital admission

765. The above notwithstanding, the Authority issued a circular to all staff to caution and underscore the need to comply with the Human Resources Manual 2017 and the Employment Act 2007.

766. In addition, the staff who were earning below a third were addressed to show cause why disciplinary action should not be taken against them.

767. The Authority has been continuously monitoring progress on this matter as part of continuous improvements. Sample show cause letters on over commitment of salary and response letters from staff who were addressed submitted.

Committee observations

768. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management of KPA did not refute the fact that it had breached the Public Service Commission Human Resource Policies and Procedures Manual, 2016, on over commitment of salary.

769. Further, the Committee noted that the management had taken steps to remedy the situation by issuing a circular cautioning employee to comply with the 1/3 rule on basic salary.

Committee recommendation

770. The Committee reprimands the Accounting Officer for breaching section C.1(3) of the Public Service Commission Human Resource Policies and Procedures Manual, 2016 and section 19(3) of the Employment Act, Cap 226 on the a-third basic rule and directs that the management should henceforth ensure that officers do not overcommit more than a third of their salaries.

15. Non-Compliance with the Employment Act, 2007 on Recruitment of Employees

771. Human resource records availed for audit review indicated that the Authority recruited one hundred and twenty (120) employees in various grades. Included among the one hundred and twenty (120) are forty (40) dockers who were engaged on contract terms for ICD Nairobi. However, requests from the relevant departments for additional staff, job adverts, application letters, long and short lists, interview minutes and reports, and approval by the Board for the recruitment were not availed for audit review. This contravened Section 5(2) of the Employment Act, 2007 states that "An employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice". Further, included among the one hundred and twenty employees are fifty-two (52) employees engaged in compliance with a Presidential directive communicated vide letter reference MOT&I/C/SM/004/2 VOL.II/65 of 22 October, 2019 on employment of KPA choir members. However, out of the fifty-two (52) employees, four (4) had primary school certificates while nine (9) had sworn affidavits stating that they did not possess any academic qualifications. Therefore, the new staff were recruited contrary to the Authority's Scheme of Service which

gives a minimum qualification of D (Plain) in Kenya Certificate of Secondary Education (KCSE) to be employed as choir members. Consequently, Management is in breach of the law.

Management response

- 772. The Management stated that the Dockers were engaged on short term contracts in February 2020 and posted to ICD Nairobi.
- 773. The forty (40) Dockers were initially engaged on a short-term contract of three (3) months with effect from 3rd February 2020. The need for their engagement arose from labor supply shortage at Inland Container Depot Nairobi resulting from the transfer of a number of staff to Naivasha following the operationalization of Naivasha Inland Container Depot.
- 774. In addition, the Board at its 366th Regular Meeting held on 23rd and 24th September and 3rd October 2019 had approved the recruitment of 491 Dockers based on existing vacancies in the Organizational structure at the time. The Board approved the proposed recruitment of the 491 Dockers subject to Ministry approvals on the same. The 40 Dockers were engaged based on this approval considering that the process to secure Ministry approval had not been concluded and the business required that the shortages be plugged to maintain efficacy.
- 775. The 52 choir members were recruited as Dockers in compliance with a Presidential directive. This necessitated Management to waive the requirement of KCSE D Plain for the following thirteen (13) staff in order to ensure that the directive was implemented without discriminating against any of the staff.

Nos.	Staff Check Nos.
1	564151
2	564152
3	564157
4	564159
5	564160
6	564162
7	564164
8	564166
9	564168
10	564175
11	564183

Nos.	Staff Check Nos.
12	564185
13	564187

Committee observation

776. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management undertook recruitment of staff following a Presidential directive to undertake the recruitment of the choir members.

777. The Committee observed that the explanation by the accounting officer is satisfactory, hence the matter is resolved.

16. Unapproved Human Resource Policy Instruments

778. Human resource documents availed for audit review indicated that as at 30 June, 2020, the Authority had a total of 6,655 employees in various positions. However, the Authority's human resource policy instruments which include organizational structure, staff grading, staff establishment and its human resource manual had not been approved by the State Corporations Advisory Committee. This contravened circular Ref. No. OP/SCAC.9/21/1/1 dated 15 May, 2017 of the State Corporations Advisory Committee which requires all state corporations to submit human resource policy instruments for approval. Consequently, Management is in breach of the law.

Management response

779. The Management stated that the Human Resources Instruments have since been approved by the State Corporations Advisory Committee and the parent Ministry. The Board at its 402nd Regular meeting held on 9th June 2022 approved implementation of SCAC approved HR instruments.

Committee observation

780. The Committee observed from the explanation of the Accounting Officer at the time of examination that the human resource policy instruments had been approved by SCAC, hence the matter is resolved.

17. Employees Appointed to Positions not in the Staff Establishment

781. A review of Human resource documents revealed that the Authority had 7,792 positions in its establishment with 6,655 positions already filled. However, among the 6,655 employees are two (2) General Managers (HE1), six (6) Heads of Departments (HE2), four (4) principals (HM1) and two hundred and fifty (250) Junior Managers (HM4), all totaling 262 employees who were appointed to positions not in the approved staff establishment. This resulted to payment of salaries and allowances of Kshs.629,067,719, contrary to Section 5(3) of the State Corporations Act, 2012 which states that, 'a state corporation may engage and employ such number of staff, including the Chief Executive, on such terms and conditions of service as the Minister may, in consultation with the Committee, approve.' Consequently, Management is in breach of the law.

Management response

782. The Management stated that the appointment of staff to positions designated as supernumerary was on a necessity basis that was dictated by the circumstances of the business, notably the Port's expansion plan, growth in cargo through-put, SGR, Infrastructure development i.e., Lamu Port Flagship Project and Kisumu Port, as well as equipment acquisition which inordinately generated considerable HR capacity requirements.

783. Upon verification of the (262) employees designated as supernumerary; the employees were deployed in line with staff requirements occasioned by port expansion as explained below:

- i) Nairobi ICD business expansion in infrastructure and operational equipment
- ii) Mombasa station introduction of the SGR operations & Container Terminal 2 operations which required additional human capital that is not in the current staff establishment.
- iii) Operationalization of Lamu & Kisumu Ports, Naivasha ICD which also required reassignment of staff to actualize the said operations.

The details of the employees are provided.

Committee observation

784. The Committee observed from the explanation of the Accounting Officer at the time of examination that the appointment of staff to positions designated as supernumerary was as a result of the urgent need brought about by the port expansion.

785. Further, the Committee observed that a new staff establishment has since been adopted and no employees were in supernumerary positions.

786. The Committee observes that since a new staff establishment has been adopted, the matter is resolved.

18. Non-Compliance with the Human Resource Policies and Procedures Manual, 2015 on Employees Above Sixty (60) Years

787. A Payroll audit for the year ended 30 June, 2020 indicated that the Authority had incurred employee cost of Kshs.15,642,702 in respect of two (2) employees who had attained the mandatory retirement age of sixty (60) years. This is contrary to the Human Resource Policies and Procedures Manual for the Public Service, 2015 which states that 'all officers shall retire from the Service on attaining the mandatory retirement age of 60 years, 65 years for persons with disabilities and/or as may be prescribed by the government from time to time.

Management response

788. The management stated that pilotage is an essential service conducted by a highly skilled and professional personnel, and critical in the authority's core business. Pilotage is a compulsory service within the jurisdiction of the authority unless for small vessels licensed for exemption.

789. The required qualification for a marine pilot is Class I Master Mariner (CoC) from a recognized maritime institution and subsequently go through a practical ship handling and pilot Channel orientation in accordance with the Marine Pilot Scheme of service and Training before they are assessed for pilot licensing.

790. Marine pilots have knowledge of local conditions and a high level of ship handling experience within specific pilotage area. They operate under a very high levels of concentration combined with a heavy workload which can result in high levels of fatigue causing a serious maritime accident leading to a disaster. Fatigue is a safety issue, and it is recommended that marine pilots have a minimum of 48 hours rest period before their next shift.

791. Due to strenuous and psychological effects, pilots work under the ILO recommended rest periods and working pattern to avoid fatigue and accidents. Marine pilots are part of an aging maritime workforce with the available recruitment pool diminishing globally. The Authority's lack of consistence in recruitment and training of pilots had created a shortage of qualified marine pilots.

792. Management notes the observations made on two employees (Pilots) on grade HM1 who were still in employment on contract basis beyond the mandatory retirement age of 60 years because of the unique expertise and critical pilotage skills required by the Authority. The Authority was experiencing shortages at the time and sought the Board of Directors approval for the engagement of the two Pilots to alleviate the shortage of pilots.

Committee observation

793. The Committee observed from the explanation of the Accounting Officer at the time of examination that marine pilotage which is an essential service for the Authority requires long period of training for one to be an expert to dock a ship. Further, there was a shortage of qualified marine pilots necessitating the engagement of the retired pilots on contractual basis.

794. The Committee observed that the matter was resolved.

Committee Recommendation

795. The Committee recommends that the Accounting Officer should henceforth establish a succession plan on marine piloting for the Authority including training of pilots to bridge the gap created when pilots retire.

19. Unconfirmed Contracts for Provision of Containers Storage Facilities

796. As disclosed under Note 6 to the financial statements, the statement of profit or loss and other comprehensive income reflects revenue from storage of full containers of Kshs.5,612,671,000 and storage of empty containers of Kshs.561,383,000, all totaling Kshs.6,174,054,000. A review of the records indicated that the Authority signed agreements with nine companies for provision of containers storage facilities in Nairobi. However, details of how the companies were identified, selected and awarded the service provision contracts were not provided for audit review. Further, audit review of the service provision agreement revealed that the Authority granted the companies the rights to handle, hold/store and deliver FCL containers at the company's storage facility. The agreements further provided that the volumes of containers to be provided by the Kenya Ports Authority for storage was dependent on current holding capacity at the storage facilities, un-availability of stacking space within Inland Container Depot Nairobi, growth in trade, any legal framework in place and gazettelement and continued gazettelement of the storage facility as a customs area. However,

evidence that the companies awarded the service provision contracts were gazetted as customs storage areas was not provided for audit review. In addition, during audit inspection in the month of November, 2020 at Inland Container Depot Nairobi, details of the number of containers transferred to the storage warehouse per day and evidence of un-availability of space at the Depot before approval of transfer of the containers were not availed for audit verification. Consequently, the validity of the contracts for warehouse storage facilities awarded to the nine companies and whether containers were transferred due to lack of storage space at the Depot could not be confirmed.

Management response

797. The management stated that the operationalization of the Standard Gauge Railway at ICD Nairobi made the depot experience rapid growth in handling cargo. To ease the holding capacity, the Authority urgently needed to commence procurement for warehouse services to control the rapid growth of cargo.
798. The Authority selected firms through a restricted tender and invited bids. The choice of restricted tender for the provision of warehouse service at ICD Nairobi was for the following reasons;
- i. There was urgency in having to engage service providers so as to manage cargo flow and operations
 - ii. Open tendering would have been timely and costly.
 - iii. The service providers needed to be in proximity to ICD Nairobi to effectively and efficiently execute the service being provided.
799. The award was done through a tendering process. When tendering process was completed nine (9) firms as follows were awarded:
- i. M/s. Great Lakes Ports Limited
 - ii. M/s. Alpha Grain Millers Limited
 - iii. M/s. Regent & Roth Storage Services
 - iv. M/s. P.N. Mashru Limited
 - v. M/s. Mitchell Cotts Freight (Kenya) Limited
 - vi. M/s. Magnate Ventures Limited
 - vii. M/s. G.N. Cargo Kenya Limited
 - viii. M/s. Siginon Group Limited, and
 - ix. M/s. Awanad Enterprises Limited.

800. The above nine (9) firms with exception to M/s. Mitchell Cotts Freight (Kenya) Limited, signed contracts with KPA. M/s. Mitchell Cotts had an existing lease agreement with KPA. Implementation of the contract by the awarded firms was subject to fulfilment of conditions by Kenya Revenue Authority. These included:
- a. The peripheral facilities were not to be licensed as CFSs but as extensions of the ICD (read KPA). They were to be "owned" by KPA but operated by the awarded firms.
 - b. The firms had to be properly secured and paved with facilities for Government agencies to conduct their mandate.
 - c. Gazettement of the peripheral facilities found to be favourable for warehousing services.
801. M/s. Mitchell Cotts and M/s. Nairobi Inland Container Depot (NICT) were gazetted.
802. As outlined under clause 5.0 (e) of the contacts, contracting of the said firms was conditional to gazette ment of the facilities as a customs area. The service providers were required to ensure gazette ment of their facilities by KRA. Further to the response on ICDN storage area, units with over 21 days were also transferred to PFSs. This ensured fluidity and efficiency as less remarshalling was involved and more stacking area availed. The dwell time improved from an average of 12 days in 2018 to 4.6 days in 2021 (January 2021-August 2021).
803. However, in the month of November 2020, there were no transfers since the volumes were low bearing in mind that Covid-19 had slowed down services. Due to the pandemic, the transfers stopped in the year 2020 with 23rd February 2020 being the last transfer. The transfers resumed much later on 28th February 2023. Indeed, the storage facilities helped in averting congestions at ICD Nairobi and Mombasa Port.

Committee observation

804. The Committee observed at the time of examination that the firms procured had had their facilities gazetted by KRA as customs area as required under the contracts hence the matter is resolved.

20. Manual Processing of Marine Bills

805. As previously reported, the Authority has a major application system for management of its operations and for financial management. However, at the time of audit in September, 2020, the marine module was not operational although the system had been fully paid for by the Authority. Due to this

shortcoming, staff at marine department prepared marine records namely: Pilotage, Navigational Dues, Tug services, Mooring, Dockage and Fresh water for ships manually, which are later filed per vessel and taken to finance department for billing in the financial management system. This exposes the marine billing to manipulation and errors. Consequently, the effectiveness of the internal controls could not be confirmed.

Management response

806. The Management stated that the KWATOS – Marine Module is fully operational and is currently utilized for the generation of both Interim and Final Bills within the SAP system.
807. Documents originating from the marine module are prepared and seamlessly interfaced with the SAP System for billing purposes. It should be appreciated that, all over the world, the Pilot log chits, are manually prepared, this serve as concrete documentary evidence supporting the data that eventually posted in Marine Module and interfaced to SAP for billing. These log chits are signed by both the Captain/Pilot of the vessel and the KPA Chief Pilot, thereby authenticating the services rendered and the billing conducted in accordance with the KPA Tariff.
808. Below are screenshots from the KWATOS Workflow for the years 2020 and 2018, affirming that the data generated by the Marine Module is efficiently interfaced with SAP to generate invoices. This integration ensures accuracy and reliability in the billing process, thus maintaining transparency and accountability within the operational framework.
809. Below are screen shorts of KWATOS Workflow of the year 2020 and 2018 confirms data generated by Marine Module is interfaced with SAP to generated invoices.

Screenshot- June 2020

Period From/To	01-06-2020	30-06-2020	SAP Doc No.	Status	--Select--				
Module Name	MARINE SERVICE		CATOS Doc No.	Location	MOHIBASA				
Row#	Module Name	Da	Catos Id	SAP Id	Vvd Code	Vessel Name	Receipt No	Update Date	Staff ID
1	Marine Master (Interim)	MIB1806207898	000004647	M5MR00000713	MSC MARCA LA	0084048741	2020-06-18 10:13:47.0	880077 (Peter D Nyc	
2	Marine Master (Final)	MIB2908207827	0000082616	NORD00000701	NORDIC	0084048886	2020-06-02 10:56:28.0	886086 (Eunice Waa	
3	Marine Master (Final)	MIB1006207861	0000081746	998000000797	ZUHRA II	0084048686	2020-06-12 08:34:28.0	886086 (Eunice Waa	
4	Marine Master (Interim)	MIB2106207827	0000046187	998000000779	ZUHRA II	0084048786	2020-06-22 14:28:28.0	90814	
5	Marine Master (Interim)	MIB1506207896	0000048136	BUEA00000727	BUN BAHAMAI	0084048736	2020-06-18 16:41:28.0	880077 (Peter D Nyc	
6	Marine Master (Final)	MIB0206207842	0000082674	998600000712	AML 1	0084048627	2020-06-08 08:12:46.0	90814	
7	Marine Master (Final)	MIB0908207826	0000082674	830100000704	UNTED SHIRT	0084048621	2020-06-22 10:40:24.0	886086 (Eunice Waa	
8	Marine Master (Final)	MIB1808207833	0000082661	APC00000384	ALPHA PAUCAC	0084048669	2020-06-25 12:24:27.0	880077 (Peter D Nyc	
9	Marine Master (Final)	MIB1506207894	0000082676	INEX00000076	INDIAN EXPRES	0084048721	2020-06-25 06:12:28.0	880077 (Peter D Nyc	
10	Marine Master (Final)	MIB3108207834	0000082624	ESMS00000709	ERIC SAMOIS	0084048612	2020-06-03 10:12:28.0	886086 (Eunice Waa	
11	Marine Master (Interim)	MIB0006207879	0000046096	JOLY00000738	JOLLY TITANIC	0084048682	2020-06-10 09:28:28.0	90814	
12	Marine Master (Interim)	MIB1906207820	0000046176	804800000716	TITAN	0084048774	2020-06-19 10:52:27.0	90814	
13	Marine Master (Interim)	MIB1506207821	0000046138	824300000761	PETRA II	0084048729	2020-06-18 21:08:28.0	880077 (Peter D Nyc	
14	Marine Master (Interim)	MIB0306207861	0000046244	87P00000662	STOIVE FRIEND	0084048640	2020-06-22 10:49:28.0	880077 (Peter D Nyc	
15	Marine Master (Final)	MIB1708207810	0000082686	81820000691	MAERKA BELTIC	0084048782	2020-06-24 08:38:28.0	886086 (Eunice Waa	

Screenshot- 2018

- i. This first screen is mainly for creation of interim Bills for expected vessel calls. (Marine Interim Billing Screen)

This ensures that the standard charges are prepared even before the vessel arrives and secured before the vessel leaves.



Search Option

ETA 01-11-2018 00:00 ~ 19-11-2018 12:31 Vessel Schedule 2018 Find

Vessel Schedule

This is the Vessel booking list

Send SAP	Vessel Code	Call Year	Call Seq	Vessel Name	Shipping Agent	Berth No	ETA	ATA	ETB
<input type="checkbox"/>	KTN	2018	1471	KIRSTEN MAERSK	STURROCK	SOT	18-11-2018 20:00		18-11-2018 21:00
<input checked="" type="checkbox"/>	9508	2018	1476	SEA LEOPARD	INCHCAPE	B01	19-11-2018 09:00		19-11-2018 10:00
<input checked="" type="checkbox"/>	1552	2018	1456	EAST WIND	ALBA PETROLEUM LTD	KOT	13-11-2018 06:00	05-11-2018 06:30	13-11-2018 07:00
<input checked="" type="checkbox"/>	9502	2018	1417	AVRA 1	NISOMAR LTD	B03	17-11-2018 06:00	17-11-2018 03:30	17-11-2018 07:00
<input checked="" type="checkbox"/>	1552	2018	1411	EAST WIND	ALBA PETROLEUM LTD	SOT	03-11-2018 12:00		03-11-2018 13:00
<input checked="" type="checkbox"/>	9516	2018	1463	CORONA	OBJ MARITIME SERVICES LTD	B03	09-11-2018 23:00	10-11-2018 20:30	09-11-2018 23:30
<input checked="" type="checkbox"/>	4625	2018	1474	SWALLOW ACE	INCHCAPE	B01	13-11-2018 02:00	13-11-2018 02:00	13-11-2018 03:00
<input checked="" type="checkbox"/>	1127	2018	1440	ALPHA CHALLENGER	SOUTHERN ENGINEERING COMP	SEC	01-11-2018 06:00	01-11-2018 06:00	01-11-2018 07:00
<input checked="" type="checkbox"/>	8288	2018	1430	ELKA ATHINA	STURROCK	KOT	03-11-2018 06:00	03-11-2018 17:29	03-11-2018 07:00

The Check box with the tick sign indicates that interface to SAP has been done

Send Sap

Profit Center HARB. Payer Shipping Agent 310020 INCHCAPE Receipt No 0084040961 Send Sap

Interim Billing Items

Row#	Indicate	Billing Code	Description	Quantity	Paid
1		110000	PILOTAGE (ENTERING/LEAVING HARBOUR)	2	Y
2		110005	TUG SERV. (BERTH/UNBERTH) WITHIN 2 MILES	4	Y
3		110012	MOORING/UNMOORING	2	Y
4		110015	NAVIGATIONAL/LIGHT DUES	1	Y
5		110016	PORT (AND HARBOUR) DUES	1	Y
6		110155	SECURITY DUES	1	Y
7		110018	DOCKAGE	48	Y

These are billing items list to a particular vessel from the booking list

Billing Items

Billing Code --Select-- Quantity Paid

- ii. The second screen is for final Billing of vessels after the vessel has left the port. (Marine Final Billing Screen)

KENYA PORTS AUTHORITY

Home Logout

Code Operation Service Equipment Control Miscellaneous Billing System **MARINE**

Home>>Billing>>Marine Final Billing

ETA 01-11-2016 00:00 ~ 15-11-2016 12:44 Value Screen: 0 2016 Find

Send SAP	Vessel Code	Call Year	Call Seq	Vessel Name	Shipping Agent	Berth No	ETA	ATA	ETB
	9507	2016	1477	SEA JAGUAR	INCHCAPE	MTG	15-11-2016 06:00	15-11-2016 20:40	15-11-2016 07:00
	9508	2016	1476	SEA LEOPARD	INCHCAPE	B01	19-11-2016 09:00		19-11-2016 10:00
	9195	2016	1509	SEAMER II	STURROCK	AMG	19-11-2016 06:00		19-11-2016 07:00
	Y55	2016	1466	SEA ODYSSEY	STURROCK	KOT	10-11-2016 14:00	10-11-2016 19:00	10-11-2016 15:00
	A4H	2016	1421	SERYAL	MAERSK LINE A/S	OA	06-11-2016 09:00	07-11-2016 20:00	06-11-2016 15:00
	A4H	2016	1421	SERYAL	MAERSK LINE A/S	OA	06-11-2016 09:00	07-11-2016 20:00	06-11-2016 15:00
	9522	2016	1510	ST. VIKTUS	STURROCK	KOT	17-11-2016 06:00		17-11-2016 07:00
	9513	2016	1449	ST. OL. SEA	STURROCK	SO7	14-11-2016 16:00	14-11-2016 16:00	14-11-2016 17:00

Profit Center **MARINE** Payer **Shipping Agents** Receipt No **226424551** Approve

Send Sap

Indicate	Billing Code	Description	Quantity	Interim Qty	Paid
<input type="checkbox"/>	110000	PILOTAGE (ENTERING/LEAVING HARBOUR)	2		Y
<input type="checkbox"/>	110005	TUG SERV. (BERTH/UNBERTH) WITHIN 2 MILES	4		Y
<input type="checkbox"/>	110012	MOORING/UNMOORING	2		Y
<input type="checkbox"/>	110015	NAVIGATIONAL/LIGHT DUES	1		Y
<input type="checkbox"/>	110016	PORT (AND HARBOUR) DUES	1		Y
<input type="checkbox"/>	110055	SECURITY DUES	1		Y
<input type="checkbox"/>	110018	DOCKAGE	46		Y

Billing Items

Billing Code	Description	Quantity	Status
110000	PILOTAGE (ENTERING/LEAVING HARBOUR)	2	Paid

Modify Delete Clear

- iii. Screen number three is the SAP interface screen which receives information from the two previous screens from the Marine module; (CATOS & SAP Doc No List Screen)

SAP

Home >> SAP >> CATOS & SAP Doc No List

Period From/To: 01-11-2018 - 19-11-2018

Module Name: MARINE SERVICE

SAP Doc No. List

Row#	Module Name	Data Count	Catos Id	SAP Id	Vvd Code	Vessel Name	Receipt No	Year
1	Marine Master (Interim)		M10071105271	0020041324	05LD20181419	HOBBOH OSLD	008404938	2018
2	Marine Master (Final)		M10031105261	0000075770	0LM30181393	GLEND MELDE	008404925	2018
3	Marine Master (Final)		M10291018231	0000078750	RHR20181410	RIVER SHINER	008404066	2018
4	Marine Master (Interim)		M10131105200	0020041370	VDDL20181485	VIL DARDANEU	008404996	2018
5	Marine Master (Final)		M10051105276	0000075756	950620181425	ASIA RUBY I	008404092	2018
6	Marine Master (Interim)		M10131108296	0020041372	961720181464	OCEANBEAUTY	008404066	2018
7	Marine Master (Interim)		M10131108299	0020041393	M187020181438	MNC JEANNE	008404007	2018
8	Marine Master (Final)		M10021105250	0000075771	JQUAZ0181400	JOLLY QUARZO	008404050	2018
9	Marine Master (Interim)		M10031105256	0020041293	54X20181369	HUGO SCHULTZ	008404091	2018
10	Marine Master (Interim)		M10081108276	0020041336	980420181428	ASIA RUBY I	008404062	2018
11	Marine Master (Interim)		M10081108273	0020041331	88MD20181437	BERMUDA	008404096	2018
12	Marine Master (Interim)		M10131105294	0020041266	MSDE20181467	Mac Denise	008404093	2018
13	Marine Master (Interim)		M10061108287	0020041117	KGMR20181402	KOTA GEMAR	008404094	2018
14	Marine Master (Final)		M10031105262	0000075819	83820181430	ELKA ATHINA	008404030	2018
15	Marine Master (Interim)		M10131105211	0020041297	953220181510	STI VIRTUS	008404091	2018
16	Marine Master (Final)		M10131105290	0000075817	3CM20181371	HAERSK JALAN	008404097	2018
17	Marine Master (Final)		M10301018246		892820181438	MAPINDUJI II	008404084	2018
18	Marine Master (Final)		M10291018232	0000075714	UN720181406	LANE STURBOC	008404080	2018
19	Marine Master (Final)		M10021105258	0000075720	155210181423	EAST WIND	008404094	2018
20	Marine Master (Interim)		M10161108319		962820181520	ALLAH KARIM	008404091	2018
21	Marine Master (Interim)		M10091105283	0020041345	98020181478	SBA LEOPARD	008404091	2018
22	Marine Master (Final)		M1001105249	0000075755	LARA20181392	MSC LARA	008404089	2018
23	Marine Master (Final)		M10071108273	0000076001	AHN20181342	AFRICAN HALC	008404094	2018
24	Marine Master (Interim)		M10021105283	0020041290	92420181268	AVIA MARINA	008404092	2018
25	Marine Master (Interim)		M10061105269	0020041319	MCL20181481	MARIA CARLA	008404093	2018
26	Marine Master (Interim)		M10141105305	0020041387	961620181463	CORONA	008404102	2018
27	Marine Master (Final)		M10081108287	0000078769	KGMR20181402	KOTA GEMAR	008404094	2018

Vessel log chits are shown below;

KENYA PORTS AUTHORITY PILOTS LOG BOOK

DATE: 12/11/19

PORT CONVENIENCE: If Yes, tick

ROTATION NO: H. 1. 1.

NAME OF VESSEL: MV TURANDOT

GRT: 55598 LCA: 199.10 Type: URL

MOVEMENT: from 01 to SEA

TUG(S): from 22 to 23

MORNING GANG: from 23 to 25

REMARKS: Purpose of call: Clauses: MG 2 Pilot 12 Tugs 2.2

PILOT'S SIGNATURE: [Signature]

MASTER'S SIGNATURE: [Signature]

KENYA PORTS AUTHORITY PILOTS LOG BOOK

DATE: 10/11/19

PORT CONVENIENCE: If Yes, tick

ROTATION NO: H. 19. 10. 099

NAME OF VESSEL: MV TURANDOT

GRT: 55598 LCA: 199.10 Type: URL

MOVEMENT: from SEA to 1.

TUG(S): from KIB. 20.35 to 21.55

MORNING GANG: from MG 20.35 to 21.00

REMARKS: Purpose of call: Clauses: MG 2 Pilot 1-2

PILOT'S SIGNATURE: [Signature]

MASTER'S SIGNATURE: [Signature]

KENYA PORTS AUTHORITY PILOTS LOG BOOK

DATE 25/05/20	PORT CONVENIENCE If Yes, tick <input type="checkbox"/>	ROTATION NO. 1
NAME OF VESSEL MV JOLLY CRISTALLO		
GRT 50722	LOA 239.0	TYPE URC
MOVEMENT From 01 to SEA		PILOT 1
TUGS [Grid with 12 dots, 1 dot in row 1, col 10 is marked]		Ordered <input type="checkbox"/>
MORNING GANG 17:15 to 17:30		Booked 17:15
REMARKS Purpose of call		Left 18:00
Clauses, MG 3.2 Pilot 1.2		Cancelled <input type="checkbox"/>
PILOT'S SIGNATURE [Signature]		Detained <input type="checkbox"/>
MASTERS SIGNATURE [Signature]		

DATE 28/05/20	PORT CONVENIENCE If Yes, tick <input type="checkbox"/>	ROTATION NO. 1
NAME OF VESSEL MV JOLLY CRISTALLO		
GRT 50722	LOA 239.00	TYPE URC
MOVEMENT From SEA to 01		PILOT 1
TUGS [Grid with 12 dots, 1 dot in row 1, col 10 is marked]		Ordered <input type="checkbox"/>
MORNING GANG 21:50 to 22:05		Booked 21:00
REMARKS Purpose of call		Left 22:05
Clauses, MG / Pilot 1.1		Cancelled <input type="checkbox"/>
PILOT'S SIGNATURE [Signature]		Detained <input type="checkbox"/>
MASTERS SIGNATURE [Signature]		

Committee observation

810. The Committee observed from the explanation of the Accounting Officer at the time of examination that the Pilot log chits, are manually prepared as this serve as concrete documentary evidence supporting the data that is eventually posted in Marine Module and interfaced to SAP for billing which is an internationally recognized best practice for accountability hence the matter is resolved.

21. Manual Processing of Overtime

811. Time management reports availed for audit review indicated that four hundred and eighty- six (486) employees were exempted from clocking in and out to work. This is contrary to Kenya Ports Authority Draft Time Management Procedure Manual, which states that, 'overtime is paid based on hours worked as per the 2018/2019 Collective Bargaining Agreement and Human Resources Manual, 2017 and exemption from clocking is not applicable during overtime'. As a result, the Management manually processed Kshs.78,756,276, being overtime paid to employees exempted from clocking. Further, details of overtime requests, approvals and evidence of actual overtime hours worked were not availed for audit review. Consequently, I am unable to confirm the effectiveness of the internal control in the management of overtime processing.

Management response

812. The Management stated that it has noted the Audit observation regarding the four hundred and eighty- six (486) employees who were exempted from clocking in and out to work. These payments were done in accordance with the Human Resource Manual 2017 and CBA 2018-2019 and not as indicated in the audit report.

813. The exemption from clocking arose because there are some work areas not covered by the biometric clocking system hence staff working during normal shift and overtime in those locations have their time worked accounted for using manual attendance registers maintained by authorized supervisors.

814. Manual time records maintenance for normal shift and overtime also applies in the following work areas;

- Staff working out of station beyond planned working time and employees with disabilities (i.e. visual & limb impairment); and

- Where biometric time reading infrastructure and equipment are not installed i.e. Mbaraki Wharf, Kisumu Port, Eldoret ICD, Lamu Port, five KPA Pre-schools located within KPA staff housing estates, Naivasha ICD, Old Port and Shimoni Port.
- Employees on suspension and interdiction.

List of employees who were exempted from clocking during the period under review and records of their online approved overtime submitted.

Committee observation

815. The Committee observed from the explanation of the Accounting Officer that some work areas were not covered by the biometrics clock-in system hence manual sign-in time records were used hence the matter is resolved.

22. Un-Approved Time Management Policy

816. The Authority has a time management department whose responsibility is to evaluate attendances and pay overtime and salaries based on actual hours worked as per the employee's time statement. However, during the year under review, the Authority used draft time attendance management policy and draft time management procedural manual to process and pay overtime allowance of Kshs.2,441,884,000 and basic salary of Kshs.3,640,045,932 for unionizable employees resulting to total unapproved expenditure of Kshs.6,081,929,932. This contravened Paragraph 1.2(1) of the Mwongozo Code of Governance which requires the Board to set and oversee the overall strategy and approve significant policies of the organization. Further, records availed for audit review indicated that nineteen (19) junior employees (clerks) were assigned time management rights which is a managerial responsibility. As a result, the junior staff initiated, executed and even approved overtime transactions for senior staff and even direct supervisors. Thus, the assigned staff's independence in the entire process is likely to be impaired. In addition, time management records indicated that thirteen (13) junior employees (clerks) had supervisory role to initiate, execute, approve and submit overtime data for payroll processing. These are tasks that would require segregation to ensure controls are in place and contravened Public Finance Management Act, 2012 Regulation 110(1) which states that, 'The Accounting Officer for a national government entity shall institute appropriate access controls needed to minimize breaches of information confidentiality, data integrity and loss of business continuity. (2) Access controls to be instituted shall include (c)

segregation of duties. Consequently, the effectiveness of the internal control could not be confirmed.

Management response

817. The management stated that:

- i) The Authority does not have a Time Management Department but instead has a Time Management Section which was under Administration Department during the audit period but now falls under the Human Resources Division after the review of the organizational structure.
- ii) While the audit observation notes that the payment of the said overtime allowance of Kshs.2,441,884,000 and basic salary of Kshs.3,640,045,932 for unionisable employees resulted to a total unapproved expenditure of Kshs.6,081,929,932 during the period of the audit review, the payments were approved and effected in accordance with the Human Resource Manual, 2017 (Section C: Policy on Salaries, Hours of Duty, General Conditions of Service, Sub-Section C. 9 Overtime, Sundry Time and Public Holiday) and the Collective Bargaining Agreement (CBA) covering the period 2018-2019 and 2020 – 2023.
- iii) Whereas it is true that Management is developing a draft Time Management Policy, the same is still work in progress and could not have been used to support payment of the stated amounts or any other payment. However, Management will make efforts to have the draft policy finalized and approved for implementation.
- iv) With regard to the concerns that thirteen (13) junior/unionisable employees were given time management roles during the audit period under review, management has since corrected this anomaly and the said staff have been promoted to management positions.

Committee observation

818. The Committee observed from the explanation of the Accounting Officer at the time of examination that the Authority has an existing time management section under the administration department. However, the time management policy was still at the drafting stage.

819. Further, the Committee observed that the overtime payments were approved under the Human Resource Manual and the Collective Bargaining Agreement.

Committee recommendation

820. The Committee recommends that within three (3) months upon adoption of this report, the Accounting Officer should expedite the drafting and finalization of the time management policy and submit the policy to the OAG.

23. Lack of an Independent ICT Function

821. Audit review of the Authority's ICT function and operations revealed that, the Head of Information Technology reports to the Head of Corporate Services Division as per the organization's structure. As a result, various departments independently sourced, procured, implemented and were managing various systems without involvement of the ICT Department. Further, the ICT Department does not have an overall inventory of the systems in use by the Authority since some are acquired and managed independently by different departments. This may result to duplication and inefficient use of resources when new systems are acquired. Consequently, there the Authority does not have adequate controls on ICT investments, management and utilization.

Management response

822. The management stated that the Authority's ICT Policy was approved by the Board in 2021 and is in place to provide guidelines on the management and utilization of ICT systems and inventory in the Authority. This is captured in the ICT Policy in section 24 ICT SOFTWARE ACQUISITION, MANAGEMENT AND DISPOSAL under clause 24.2.6:

"Procurement and disposal of software shall be in accordance with the Public Procurement and Asset Disposal Act, 2015. The procurement shall be centralized within the ICT department to ensure conformity to KPA software standards."

823. The Authority has also acquired a system for taking inventory of its computing devices known as Satis. ICT systems procured or disposed of by the Authority are registered/recorded in the system. This facilitates better centralized management of ICT systems. Currently, the budget for all ICT related projects/investments is centralized and domiciled in the ICT Division to deter departments from independently sourcing, procuring, and implementing systems without involvement of the ICT Division.

Committee observation

824. The Committee observed that since the Authority has a sufficient ICT policy in place and has acquired a system of tracking inventory of its computing devices, the matter is resolved.

24. Provision of Services Before Issuance of Purchase Orders

825. Audit review of procurement documents availed for audit review indicated that during the year under review the Authority prepared and issued purchase orders of Kshs.12,459,790 to service providers after services had been rendered and invoices received. The Management did not provide details of how the Authority communicated to service providers regarding the need, quantity to be provided and other specifications of the services in absence of the purchase orders. Consequently, the legality and validity of the purchase orders and invoices is in doubt.

Management response

826. The Management stated that during the year under review, the Authority entered a contract with the Maritime & Management Institute of East Africa to provide training services. The terms of the contract guided that payment for the training services be made after receipt of invoices and confirmation by the Human Resources Department regarding the courses conducted viz a viz the actual number of staffs trained. Hence resulting in the issuance of purchase orders after the services had been provided.

Committee observation

827. The Committee observed from the explanation of the Accounting Officer at the time of examination that the contract for providing training services required that payments were to be made after the staff were trained leading to issuance of purchase orders after the service was rendered hence the matter is resolved.

FINANCIAL YEAR 2020/2021

828. The Auditor General gave a qualified opinion audit and raised the following concerns:

25. Operating Revenue

25.1 Loss of Revenue on Waivers

829. The balance includes an amount of Kshs.4,519,604,000 in respect of revenue from storage of containers. The amount is net off waiver of

Kshs.1,914,950 granted by management after approval by the corporate waiver committee and inland container depots (ICD/s) waiver committee on storage revenue chargeable on dangerous cargo. However, this is contrary to Paragraph 5.0 (d) of the waiver policy, which states that, waiver shall not be granted on dangerous cargo rent.

830. Further information provided indicated that the Authority has not set aside and designated with the necessary infrastructure to respond to any peril and suitable place for storage of dangerous cargo to endure that employees and authority assets are not exposed to risks posed by dangerous cargo.

Management Response.

i) Waiver granted on dangerous cargo

831. The Management stated that storage of dangerous cargo in the port is highly discouraged because of the potential safety and health risks that such cargo can pose to the environment. However, for a variety of reasons such cargo may still end up uncollected on time thereby accruing storage charges.

832. Waiver of storage charges for dangerous cargo is disallowed in the waiver policy to deter cargo owners from using the port as a storage facility. While it is imperative to discourage the storage of dangerous cargo in the port due to the inherent safety and environmental risks involved, there are instances where waivers of storage charges have been granted under exceptional circumstances. These waivers have typically been extended in cases such as:

(a) the inadvertent railage of containerized cargo destined for Inland Container Depot (ICD) Nairobi to Mombasa, subsequently necessitating its return, resulting in storage charges for which the Authority assumed liability, warranting a 100% waiver.

(b) delays in transporting cargo bound for ICD, leading to storage charges for which both the Authority and Kenya Railways (KR) were responsible, prompting another 100% waiver.

(c) disruptions caused by KR/SGR Hold, which also resulted in waiver approvals. KR / SGR Hold refers to stoppage of movement of consignments for various railage issues that may be brought up by Kenya Railways. The instructions are given to the SGR Section staff who stop the movement in KWATOS until otherwise advised by the Kenya Railways.

833. Despite the significance of Clause 5 (d) in the Waiver Policy 2018, which aims to prevent the misuse of the port as a storage facility, waivers are granted after considering a combination of factors aimed at addressing the objectives outlined in both the original 2018 policy and its revised 2021 version.

ii) Designated area for safe keeping Dangerous Cargo

834. The Authority has procedures for handling dangerous cargo. At the Container Terminal, all class 1 and class 5.1 UNNO 1942 (explosives) are not discharged from vessels before inspection. The cargo is thereafter directly delivered and not stacked in the yards.

835. However, in cases where dangerous cargo (other than class 1 and class 5.1) must be staked in port areas, since the Authority has designated the following segregation sites for dangerous cargo stacking.

- Container Terminal 1: Block K Bay 15-27
- Container Terminal 2: Block SL Bay 0-31

Committee observations

836. The Committee observed from the submission of the Accounting Officer at the time of examination that the Accounting officer did not refute the fact that waivers were granted on storage charges for dangerous cargo.

837. Further, the Committee observed that although the management of KPA in their submission stated the reasons why the waivers were granted on storage charges for dangerous cargo, they did not provide sufficient evidence to explain why the waivers were granted to specific customers.

838. The Committee also observed that the management had provided designated areas for handling dangerous cargo.

Committee recommendation

839. The Committee directs that within three (3) months upon the adoption of this report, the Accounting Officer to submit the provide sufficient evidence to explain why the waivers were granted to specific customers to the OAG for verification.

25.2 Non-Collection of Jetty Fees

840. Further the balance includes an amount of kshs.553,000 relating to jetty fees. Review of records provided indicated that there were 82 private commercial facilities (jetties) along the Kenya Coast line as per a survey report

of 2019. During the year under review, the Authority sent demand note totaling Kshs.38, 071,050 to sixty-seven of the facilities for jetty fees as required by clauses 9.1 and 9.2 of the Authority tariffs. However, 60 of the facilities with a total fee demand of kshs.37,542,585 did not respond and the same was not billed.

841. Further, details of jetties and facility (names of Jetty, locations, facility owners, or operators' jetty fees payable and amount due) on inland and other water ways and ports were not provided for audit review.

Management Response

842. The management stated that the amount of Kshs 553,000 related to Jetty fees earned at Kisumu Pier as shown in the table below:

Document Number	Document Date	Amount (Kshs)	Segment	Text
1340216439	10/29/2020	-48,050.00	ICDK	September 2020 earnings-Jetty fees
1340216442	10/29/2020	48,050.00	ICDK	September 2020 earnings-Jetty fees
1340216444	10/29/2020	-48,050.00	ICDK	September 2020 earnings-Jetty fees
1340217282	11/30/2020	-120,100.00	ICDK	Total revenue earnings for KSM pier for November 2020
1340217283	11/30/2020	-10,938.00	ICDK	USD earnings for KSM pier for Nov.2020
1340217284	12/31/2020	-55,100.00	ICDK	Total revenue earnings for KSM pier for December 2020
1340219541	5/26/2021	45,700.00	ICDK	Jetty fees for Orion II
9036848	8/14/2020	-32,100.00	ICDN	July 2020 earnings - Jetty fees
9036850	8/14/2020	-75,467.00	ICDK	July 2020 Earnings - USD Jetty Fees
9036922	9/7/2020	-78,150.00	ICDN	Aug 2020 Earnings - Jetty Fees
9037247	1/27/2021	-22,000.00	ICDK	Part of January 2021 revenue collections-Kisumu pier

Document Number	Document Date	Amount (Kshs)	Segment	Text
9037251	1/29/2021	-15,650.00	ICDK	Part of January 2021 revenue collections-Kisumu pier
9037267	2/16/2021	-16,432.50	ICDK	Part of February 2021 collections
9037409	3/13/2021	-36,300.00	ICDK	Part of March 2021 collections KSM pier
9037410	3/13/2021	-14,254.50	ICDK	Part of March 2021 collections KSM pier
9037419	3/16/2021	-2,193.00	ICDK	Part of March 2021 collections KSM pier
9037445	3/31/2021	-71,350.00	ICDK	Part of March 2021 collections KSM pier
		-552,385.00		

843. During the year under review, the Authority sent demand notes totaling Kshs 38,071,050 to sixty-seven (67) of the facilities for jetty fees as required by Clauses 9.1 and 9.2 of the Authority's tariffs. However, sixty (60) of the facilities with a total fee demand of Kshs 37,542,585 did not respond and the same was not billed.

844. It is significant to point out that, FY 2020/21 was the climax of the Covid-19 pandemic period. Some staff were affected and could not carry out their duties. This seriously slowed down the functions. The Government restriction on movement also impacted operations of Jetties and boat operators. Most of the clients could not be traced or reached, affecting the revenue collection for the period. Despite the challenges, the Authority was able to bill and collect revenue from jetties and boat operators of Kshs 4,582,669.50.

845. The revenue that was not recognized in the books was because IFRS 15 requirements on revenue recognition could not be met. IFRS 15 foundation for revenue recognition is contract creation. The process of contract creation requires that:

- i) The parties to the contract have approved the contract.
- ii) Each party's rights in relation to the goods or services to be transferred can be identified.

- iii) The payment terms and conditions for the goods or services to be transferred can be identified.
 - iv) The contract has commercial substance;
 - v) The collection of an amount of consideration to which the entity is entitled to in exchange for the goods or services is probable.
846. The IFRS 15 recognition rules could not be fulfilled because of the following:
- i) The Kenya Association of Sea Anglers (KASA) disputed/disagreed on the Authority's Tariff application thereby refusing to pay (see emails from sample Boat operators.
 - ii) The collection of jetty fees has further been hampered by boat owners shifting base and addresses across the country when demand letters are served while others completely relocated from Kenya.
 - iii) The refusal of the Lamu boat owners to pay the new rates in the revised tariff. The boat owners consider the increase of the KPA tariff charges to \$200 from \$75 to be punitive to their businesses.
847. Prudence concept dictated that the revenue is not recognised in such circumstances. Prudence is the inclusion of a degree of caution in the exercise of the judgements needed in making the estimates required under conditions of uncertainty, such that assets or income are not overstated, and liabilities or expenses are not understated.
848. The Authority's Lamu Port Management has engaged the Boat owners intending to resolve the impasse. They held a meeting with the boat owners on 8th February 2023 at the Lamu Jetty Conference to understand the Boat owners' concerns/complaints.
849. The boat owners still wanted the former rates to be retained in view of the business working environment as listed below;
- i) Decreased number of passengers arising from state agencies and government departments having their staff boats as well as others contracting a few of the boat operators e.g., KPA, KMA, KRA, Coast Guards, County Government Airlines, Hotels, Bus Companies.
 - ii) Multiple charges fees from several state agencies e.g., KPA, KMA, Forestry & Fisheries.
 - iii) KMA tools and gears requirements for registration are expensive thus increasing the running costs.
 - iv) The business environment currently is not friendly. Security issues have negatively impacted on boat operations in Lamu for all passenger, leisure, and cargo boats.

v) The post Covid recovery is slow.

850. The Authority is guided by the Kenya Ports Authority Act. The mandate of the Authority was expanded to include inland water ways in November 2014. The inland waterways managed by the Authority were transferred to the Authority from Kenya Railways through legal notice number 22 of 4th April 2012.

851. The inland water ways transferred to KPA as detailed in the legal notice include:

- i) Kisumu Port
- ii) Homabay Pier
- iii) Kendu Bay Pier
- iv) Asembo Pier
- v) Mohuru Bay Pier
- vi) Luanda K'otieno, Pier, Mbita
- vii) Karungu Pier
- viii) Sindo Point
- ix) Mfangano Pier

852. All piers with the exception of Kisumu Port are not operational as they are in a dilapidated state. The tariff applicable at the Kisumu Port is the Kenya Railways tariff until when the new proposed KPA tariff will be approved. The piers are yet to be incorporated in the Authority's books of accounts as assets because the titles have not been transferred to the Authority.

Committee observations

853. The Committee observed from the submissions of the Accounting Officer during the examination that the management faced challenges in collecting the jetty fees due to small boat operators' nomadic movements, disputes about the new tariffs and the COVID 19 pandemic.

854. The Committee also observed that currently the management is collaborating with other government agencies, e.g., KFS, Kenya Coast Guards, among others, to ensure enforcement in the collection of the fees.

Committee recommendation

855. The Committee recommends that within three (3) months upon adoption of this report, the Accounting Officer should, in collaboration with other

agencies, expedite the collection of the jetty fees and submit a status report on the collection to the OAG.

25.3 Unconfirmed Credit Revenue

856. In addition, the balance includes an amount of Kshs. 978,029,000 in respect of re-marshalling charges revenue. Review of the re-marshalling charges ledger revealed cumulative credit memos totaling to kshs. 147,711,088 give to cargo customers. The credit memos were supported by disputes electronic mails from the customers. However, details of original bills and evidence to support each of the disputes / claims by the customers for the alleged wrong billings prior to approval of credit memos were not provided for audit review. Wrong data capture in the system for billing purposes which is latter reversed using the credit memos is an indication of weaknesses in the revenue capturing and billing system.
857. In the circumstances, the accuracy and completeness the revenue for re-marshalling charges of Kshs. 980,497,283 for the year ended 30 June 2021 could not be confirmed.

Management Response

858. The management stated that for the Authority, to fast-track dispute resolutions with customers and thereby enhance prompt collection of receivables, it incorporated a Dispute Management module/portal in the SAP Financial system.
859. During the audit, management explained to the auditors that there exists a Dispute Management Module/portal in SAP system where the clients register their disputes online via a portal. The Dispute Management Module/portal operates in a workflow format, where the disputes registered by clients flow online to the Authority's financial system for evaluation of merit. The Auditors are also provided with access to SAP modules and training to facilitate the audit.
860. In the dispute resolution module/portal, the clients log in with their credentials and file their dispute online, stating reasons that have necessitated the dispute. The credit memos requests are verified in the Billing section with corroboration from the Operations sections and where merited, the credit is processed. All credit notes are automatically linked to the underlying original bill/invoice. The Dispute module/portal internal controls cannot allow processing of the credit memo without linking it to the original invoice. The module is also inbuilt with maker-checker controls such that the evaluation

goes through a review–approval system to ensure accuracy, correctness and merit.

861. The dispute management system illustrates in detail reasons for issuing credit notes. The Authority has a continuous training program for billers and operations staff to equip them with Knowledge of the tariff, tariff application and operational procedures. This is aimed at reducing wrong data capture at both operational and billing levels enhancing billing efficiency.

Committee observations

862. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had an automated system, and during the time of the audit, the credit note entries were referenced to the original memo. Further, the management had trained the officers on billing and operational procedures.
863. The Committee observed that since the management had automated the dispute management module, the matter is resolved.

26 Other Income

864. As disclosed in Note 7 to the financial statements, the statement of profit or loss and other comprehensive income for the year ended 30 June,2021 reflects other income of Kshs.720,475,000. The following unsatisfactory observations were made:

26.1 Unconfirmed Income from Rental Properties Without Lease Agreement

865. The balance includes an amount of Kshs. 221,263,000 in respect of rent and rates receivables. However, review of documents provided by management indicated that thirty (30) businesses and institution with premises at the Authority Mombasa Port precincts were not paying rent and did not have lease agreements with the Authority. Another five (5) businesses whose lease agreement were not provided for audit, had been closed with the tenants vacating the premises without settling undetermined amount of outstanding rent. However, the entities were issued with documents (port passes) which allows the staff and employees of the institutions and businesses access to Mombasa Ports. This is a clear indication that the Authority lost undetermined rental revenue chargeable to the occupants/users of the said premises.

Management Response

866. The management stated that it is making efforts to ensure that appropriate lease agreements are obtained for those that have settled their rent payments. Leases for tenants with rent arrears are not processed until the outstanding debt is cleared. Additionally, as a control measure, tenants with outstanding rent arrears/utility bills have their port access passes deactivated and power supply to the business premises disconnected until outstanding arrears are settled or acceptable payment plan is submitted.

Regarding the issue on port access passes for the five businesses, the position is that the premises were abandoned and thus not operational. Below is an updated status of each of the listed sitting tenants.

NAME	CONTRACT NUMBER	COMMENT
Bandari Sacco Ltd - ATM	120000736	Lease renewal in progress. Awaiting execution by the Authority
Bandari Sacco Ltd - Liaison Office (Hqtrs)	120000734	Lease renewal in progress. Awaiting execution by the Authority
Qamara Communications Ltd	120000491	Lease Terminated - Tenant terminated lease and vacated premises (copy of lease termination and final payment attached)
Veterinary Services		Lease renewal in progress
Mombasa Fresh Water Supplier	120000553	Outstanding rent arrears., Payment plan in place though not adhered to, the Lessee has since abandoned the premises.
Baggage Hall Canteen	120000680	Matter finalized in favour of KPA under court case No: MSA CMCC NO. 3504 OF 2010 - DHANVANTRAI MOHANLAL MARU T/A NEW BAGGAGE HALL CANTEEN -VS- KPA. Tenant has partially paid outstanding arrears and though not operational, the Authority has exercised possessory lien over the

NAME	CONTRACT NUMBER	COMMENT
		tenant's office equipment awaiting payment of the rent arrears.
Trademark East Africa	No contract	New lease executed on 5 th October 2022.
Kenya Coast Guard Service	No contract	Lease formalization in progress
Marajani Communications Tours & Ass	120000722	Lease renewal in progress
Blue Cat Port Services	120000661	Lease renewal in progress
Ruman Ship Contractors Limited	120000543	Lease renewal in progress
Bidu General Agencies	120000705	Lease expired and tenant vacated the premises
Pharmacy & Poisons Board	No contract	Rent arrears are recently cleared. Renewal of lease in progress
Uganda Revenue Authority	No contract	Renewal of lease in progress
Joseph Mwalukuku	No contract	Court case dismissed and notice issued to the tenants for the new applicable rent which will inform execution of a new lease.
Edith M. Mwangeka	No contract	Court case dismissed and notice issued to the tenants for the new applicable rent which will inform execution of a new lease.
Davis Mwangeka (Police Canteen)	No contract	Ongoing Court Case.
Snack Bar (Jane A. Ochieng)	120000285	Court case dismissed for want of prosecution and notice issued for eviction of tenant.
Elizabeth Chege	120000672	Rent arrears recently cleared and letter of offer issued. Lease renewal in progress.

NAME	CONTRACT NUMBER	COMMENT
Anastasia Obayi	120000585	Rent arrears recently cleared and letter of offer issued. Lease renewal in progress
Paul Kariuki Gachee	120000569	Outstanding rent arrears have stalled the renewal of lease despite the space being abandoned. Demand notice issued
Musoo Mukua	120000588	Existing rent arrears stalled the lease renewal process though the tenant has since abandoned the premises
Kassim Abdulrahman (Shop)	120000267	rent arrears recently paid issuance of letter of offer in progress.
Port workers Co-op Society (H2)	1220000572	No current Lease Agreement - Outstanding rent arrears due for payment in line with agreed payment plan
Hiribae Dirivo (Mpesa Booth)	120000709	Lease renewal in progress awaiting execution by Lessee
Mombasa Sea Port Duty Free Ltd	120000731	Lease renewal in progress awaiting execution by the Authority
Ruth Magero (K-Boat Canteen)	120000651	Renewal of lease in progress
Kenya Navy	120000712	Lease renewal held in abeyance pending settlement of outstanding rent arrears
Gantry Crane Operators Canteen	No contract	No lease agreement
Joseline Akinyi	120000682	Abandoned
Songoro Boat Services	120000572	Abandoned
Hellen Njeri Njoroge (Soda Kiosk)	120000709	Abandoned
Valmark Bureau	120000637	Abandoned
Veronica Mule (Kiosk)	120000664	Abandoned

Committee observations

867. The Committee observed at the time of examination that the management did not refute the fact that there were some tenants who did not have lease agreements.
868. Further, the Committee observed that the management provided a schedule of the tenants that entailed terminated leases, renewed leases, rent arrears, evicted tenants, those with ongoing court cases, and tenants that had abandoned their sites.
869. The Committee also observed that passes for staff who were no longer operating within the Port area had been disabled.
870. The Committee observes that the matter is unresolved.

26.2 Undercharging of Rent for Housed Staff

871. Included also under Note 7 to the financial statements is an amount of Kshs. 115,681,000 in respect of recovery from housed employees. Audit review of the rent charged and rent chargeable as per the Authority Market survey indicated that the housed employees were undercharged by about Kshs. 90,160,200 during the year under review. Further records provided for audit indicated that a 7% increment was implemented in September 2020 with the intended gradual increment to match the market rates. However, management had not revised the rent upwards as of December 2021. In addition, the Authority was not paying fringe benefits to KRA for provision of houses to employees at discounted rates as require by Section 21B of the income Tax Act Cap 470. In the circumstances, the accuracy and completeness of rent from housed employees of Kshs. 336,944,000 for the year ended 30 June 2021 could not be confirmed.

Management Response

872. The Authority submitted that;
- i) Following the rent assessment that was carried on all the Authority's housing estates in 2019, rent for the housing units was reviewed upwards by 7% w.e.f. September 2020, a partial implementation that was influenced by the inflation factor, the need to have the houses renovated and a new rent assessment carried out.
 - ii) Management has now completed the new rent assessment on all KPA staff houses and the review of the commercial rent recovery with the possibility of gradual implementation to attain the required market level based on

the new rent assessment report which is in line with the Human Resource Manual 2021.

- iii) Management was looking forward to a periodic review of rent to ensure rent charged is within market rates.
- iv) The phased rent increase approach is aimed at serving to maintain a balance between affordability for the employees occupying the housing units and compliance with the audit observations/recommendations and charging of house rent at the required market rates.

873. Further, Section 12(B) of the Income Tax Act 2017 defines Fringe Benefit Tax as tax payable by every employer in respect of a loan provided at an interest rate lower than the market interest rate. The provision of houses by the Authority is for houses owned by the Authority and the charge is on monthly basis as rentals and not loans. It, therefore, does not qualify for Fringe Benefit Tax.

Committee observations

874. The Committee observed from the submission of the Accounting Officer at the time of examination that although an assessment was undertaken and rent was reviewed, there was a likelihood that KPA was not collecting the right amount of rental fee from the houses.

Committee recommendation

875. The Committee recommends that the Accounting Officer of the Ministry of Housing and Urban Development develop a policy on rental fees to be paid by staff occupying houses owned by government agencies.

27 Irregular Overtime Allowances

876. As disclosed in Note 9 to the financial statements, the statement of loss/profit and other comprehensive income reflects establishment expenses totaling to Kshs. 17,906,332,000. However, the balance includes an overtime allowance totaling to Kshs. 1,311,988,000. However, review of overtime records revealed that Management approved and paid overtime allowances amounting to Kshs. 504,718,989 in excess of the 30% and 20% required for operational and administrative employees respectively. These contravened Paragraph C.9(h) of the Kenya Ports Authority Human Resource Manual, 2017 which requires overtime hours payable at the applicable rate to be limited to a maximum of 30% enhance timed of the normal monthly working hours for operational employees and 20% for administrative and non-operational

employees. Management did not provide for audit review, details of specific duties and evidence of work allocation to justify the request and approvals for overtime by the supervises. Further, overtime records provided for audit review indicated that management approved and paid an amount of Kshs. 59,142,351 in respect of overtime allowance to employees on training grades. This is not only to paragraph C.9(f) of the KPA HR Manual 2017 which prohibits payment to this category of employees. In the circumstances, the regularity and propriety of overpayment of Kshs. 563,861,340 in respect of the overtime allowances and training could not be confirmed.

Management Response

877. The management stated that the Authority was experiencing staff shortages while at the same time there were various emerging business needs namely:

- (i) the opening of the second container terminal;
- (ii) the expansion of the ICD – Nairobi;
- (iii) opening of ICD – Naivasha;
- (iv) launching of the Lamu Port; and
- (v) the Standard Gauge Railway (SGR).

878. In view of the foregoing, there was immense need to increase the manning levels at operational areas within the Authority. This could not be achieved because of a circular letter issued by the Secretary of the State Corporations Advisory Committee (SCAC) letter which froze the filling of all vacant positions until such a time that the staff establishment is considered and approved.

879. Consequently, the Authority had to authorize the staff to work overtime beyond the set overtime hours of thirty percent (30%) enhanced time of the normal monthly hours for operational employees and twenty percent (20%) for administrative/non-operational employees. Therefore, the expenditure of Kshs 879,764,063 in excess overtime allowances paid during the audit period was inevitable for the smooth running of port operations and to meet business/customers' demands.

880. Further, employees on training grades were paid overtime allowances due to exigency of services caused by shortage of staff arising from:

1) The expansion of port services;

- 1) Operationalization of the first phase of the 2nd Container Terminal
- 2) Standard Gauge Railway (SGR),
- 3) expansion of the Inland Container Depot (ICD) Nairobi and Naivasha

- 4) The completion and operationalization of the first berth at the Port of Lamu.

2) Compliance COVID – 19 pandemic Protocols

The above listed necessitated demands for labour, and to mitigate same, it became necessary to deploy employees on training grades to work overtime. The assigning of the trainees to work overtime were however approved by respective departmental heads.

Committee observation

881. The Committee observed that employees on training grades were staff who were undergoing on-job training to operate special machines, and with time they would operate the machines on their own and thus qualified to work on shifts.
882. The Committee observes that since the employees on training grades were staff who were undergoing on-job training to operate special machines and the Authority required more employees due to the increased operations at the time, the explanation on payment of overtime to these employees was satisfactory and the matter stands resolved.

28 Administrative Expenses

883. As disclosed in Note 8 to the financial statements, the statement of profit or loss and other comprehensive income reflects administrative expenses of Kshs.4,429,215,000. The following unsatisfactory observations were made:

28.1 Unsupported Insurance Premiums

884. The balance includes an expenditure on insurance premiums of Kshs.490,620,000. Records provided for audit indicated that the Authority extended thirty (30) insurance policy covers with three (3) different insurance companies for a period of one year after a similar extension done the previous year expired. The extensions were done under the previous terms without spelling out the contractual obligations of the insurer and amounts/values of assets insured.
885. A review of the Authority's fixed assets registers showed that the Authority acquired additional assets at a cost of Kshs.12,102,990,000 during the year under review and Kshs.6,063,771,000 in the previous financial year (2019/2020), all totaling to Kshs.18,166,761,000. The Authority provided for endorsement of assets valued at Kshs.5,154,916,929 in respect of additional assets included in

the extended contracts. However, Management did not provide evidence to show that assets valued at Kshs.13,011,844,710 acquired during the two years were insured and therefore were exposed to loss in case of a peril.

886. Further, disclosed in the financial statements is a transfer of assets with a net book value of Kshs.1,670,405,000 to Bandari Maritime Academy. The assets were included among the assets insured by the Authority. The extended policies also included policies covered Kenya Ports Authority's pension scheme assets and liability of unknown value. In both situations, the Authority did not have insurable interest in the assets, thus could not be indemnified in case of loss.

Management Response.

887. The management stated that—

i) Extension of Contract.

888. Extension of contract for insurance services was necessitated by the fact that the previous insurance tender for 2017-2019 had been challenged in the High Court Judicial Review No. 03 of 2020 and the matter took a considerable period before final determination. Therefore, KPA Management extended the contract under the same terms and conditions as detailed in the memo dated 27th October 2020.

ii) Insurance of assets valued at Kshs. 13,011.844,710

889. During the period FY 2020/2021 and FY 2019/2020, the Authority had acquired additional assets of Kshs. 12,102,990,000 and Kshs. 6,063,771,000 respectively. However, assets worth Kshs.5,154,916,929 were insured in respect of additional assets. This is because during the same period, there was disposal of assets worth Kshs. 77,682,351.97 giving a net balance of Kshs. 12,025,307,512. Further breakdown of this amount relates to addition of assets per class. It is evident that the costs of these assets mainly relate to concrete works and intangible assets which are not insured since the risks involved are minimal. The assets valued at **Kshs.8,760,017,158.87** and **Kshs. 205,331,536.21** respectively relates to concrete works and intangible assets which are not insured in. From this explanation, it is therefore clear that the authority's assets were not exposed to any insurable risks for the period under review.

iii) Bandari Maritime Academy assets insured.

890. Bandari Maritime Academy was established through an executive order vide legal Notice No. 233 dated 28th November 2018. The implementation of

this order to transform Bandari College to a fully-fledged and independent Bandari Maritime Academy, required diligent management of existing contracts to ensure a smooth transition. During the transition period, the Authority received an approval from the National Treasury and Planning to continue supporting Bandari Maritime Academy for a period up to the end of FY 2021/2022. This approval enabled the Authority to continue servicing existing insurance contracts until such a time when the process of contract novation and asset transfer was completed. Under the circumstances, those assets belonging to Bandari Maritime Academy would still appear in the asset register of the Authority hence, the Authority insured the same to avert any form of exposure.

iv) Extension of Policies belonging to Kenya Ports Pension Scheme.

891. Kenya Ports Pension Scheme had existed as one of the departments of the Authority. Whilst it later became a separate legal entity, the Authority continued to provide technical assistance up to 2021. One of the areas where the Authority continued to offer technical assistance was that of insurance programme management. To this end therefore, during the period under review, the request for extension of insurance services was made on the basis that, Kenya Ports Pension Scheme did not have adequate capacity to renew their insurance programme. The Authority, being the sponsor, came in to offer technical facilitation in renewal of insurance cover but the vote that was to be used in settling premium was that of KPA Pension Scheme.

Committee observation

892. The Committee observed from the submission of the Accounting Officer during the examination that the Authority was mandated to service insurance premiums for Bandari College and the Kenya Ports Pension Scheme during the transition period, hence the matter stands resolved.

28.2 Unsupported Corporate Social Responsibility Expenses

893. Disclosed also under Note 8 to the financial statements are corporate social responsibility expenses totaling to Kshs.311,151,000. Included in the expenses is an amount of Kshs.140,397,089 in respect of part funding of four (4) jetties construction in Lamu County. Records provided for audit indicated that the Authority set aside Kshs.474,100,000 for joint partnership with the Ministry of Public Works to fund the four (4) jetties. However, the procurement, supervision and management of the project was done by the Ministry of Public Works, thus

overriding the mandate of the Authority's Accounting Officer as provided under Section 68 of the Public Finance Management Act, 2012. Further, the payment made by the Authority were Authorized and approved by the Ministry of Public Works officers without the supporting measured bills of quantities.

894. Physical verification done in the month of December 2021 revealed that rehabilitation of Mtangawanda Jetty was complete, with the contractor having left the site. However, there were cracks on the jetty flooring and stairs while a section of the Jetty had collapsed/caved in, thereby exposing reinforcement bars.
895. In the circumstances, the regularity, accuracy and completeness of corporate social responsibility expenses of Kshs.631,017,089 could not be confirmed.

Management Response

896. The management stated that the jetties were being rehabilitated / reconstructed collaboratively by the State Department of Public Works and the Authority to ensure safety of pedestrians and to promote socio-economic activities. The State Department of Public Works provided a budget of KES. 124 million whereas the Authority was requested by the Government to assist in funding the CSR project to the tune of 474.1 million vide the National Treasury's letter Ref. RES 1096/18/01(15) of 24th September 2018 to MOT&I and that from the Ministry of Transport and Infrastructure to KPA. The request for funding the CSR project was tabled and approved by the KPA Board at its 106th Meeting held on 22nd January 2019.
897. The State Department of Public Works had the responsibility of procurement, supervision and management of the CSR projects while the Authority was expected to maintain the jetties once works were completed. The funding assistance provided by the Authority was in terms of making payments directly to the various contractors awarded contracts to rehabilitate the jetties based on certified measured works by technically competent officers of the State Department of Public Works. The payments highlighted pertain to the period under audit.
898. At the time of audit, the rehabilitation of Mtangawanda Jetty works had not been completed and handed over but the contract had been terminated by State Department of Public Works due to non-performance by the contractor. The contractor resumed works after negotiation with the Project

Manager on 2nd January 2022 and the remaining works were executed and completed to the satisfaction of the Project Manager on 6th February 2022.

899. The cracks on the jetty flooring, the stairs and the Jetty section which had collapsed/caved in, thereby exposing reinforcement bars were caused by a barge offloading KPLC cargo. The KPLC contractor accepted liability and made good the damage caused to the jetty.

Committee observations

900. The Committee observed at the time of examination that Authority was requested by the National Treasury to fund the rehabilitation and reconstruction of the jetties and the Board approved the CSR project.

901. Further, the four sites had been completed and handed over to KPA and were currently in use, while the Mtagwawanda Jetty had been repaired and handed over to the Authority.

902. The Committee observes that since the Authority obtained the approval to undertake the CSR projects, the matter stands resolved.

29 Unsupported Expenses on Operating Expenses

903. As disclosed in Note 10 to the financial statements, the statement of profit or loss and other comprehensive income reflects operating expenses balance of Kshs.5,284,137,000. The following observations were made:

29.1 Unsupported Retention Monies

904. The balance includes expenditure on repairs of port infrastructure balance of Kshs.1,414,815,000 disclosed in Note 10 to the financial statements includes retention monies totaling to Kshs.2,511,439. The latter relates to tender for demolition, installation and repairs of navigation masts and related civil works at Malindi, Kipini and Likoni which had been awarded at a contract sum of Kshs.59,796,187. The works were procured using the biennial contract for repairs and maintenance works included demolition of old masts and installation of new ones.

905. During physical verification in the month of November, 2021, it was noted that the mast at Malindi was fiber reinforced in design. This was not part of bills of quantities provided for audit review. Further, Management showed the audit team three different masts in Likoni without specifying the ones relating to this contract. In addition, instructions to the contractor and measurements

of actual works done in comparison to the previous existing installations for the items were not provided for audit review.

Management Response

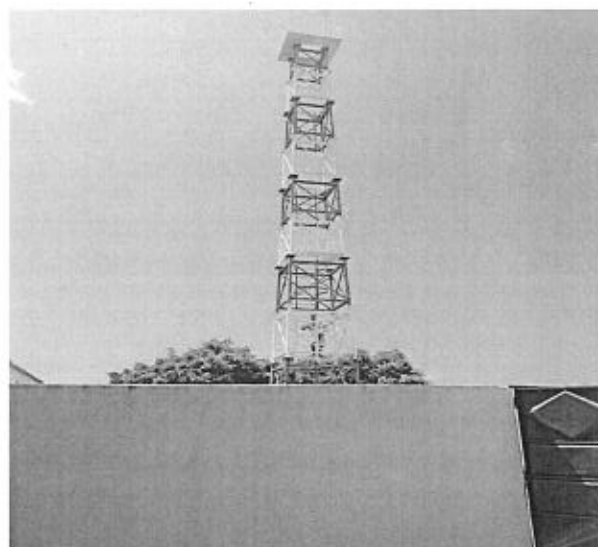
923. The management stated that the works covered under the contract were for the demolition, installation and repairs of navigation masts and related civil works at Malindi, Kipini and Likoni as per the BOQ. In respect of Malindi and Likoni works: -

- (i) Malindi – The Malindi Front and Rear Masts are fibre reinforced. The executed works on these masts included sealing of cracks and painting using marine paint. Painting of all masts both steel and fibre was contained in item 2.07 of the Bills of Quantities.
- (ii) Likoni – Rehabilitation and reconstruction of all the three masts in Likoni were covered under the contract. under item 2.03, 2.04 & 2.07 of the BOQ. A site visit to Likoni involving the technical staff and the Auditors was deemed fit and the same took place on Tuesday the 13th of February 2024 and clarification made on the nature of work done as per the BOQ.

1. Malindi Navigational Aids



(i) Maintained Malindi front leading Light

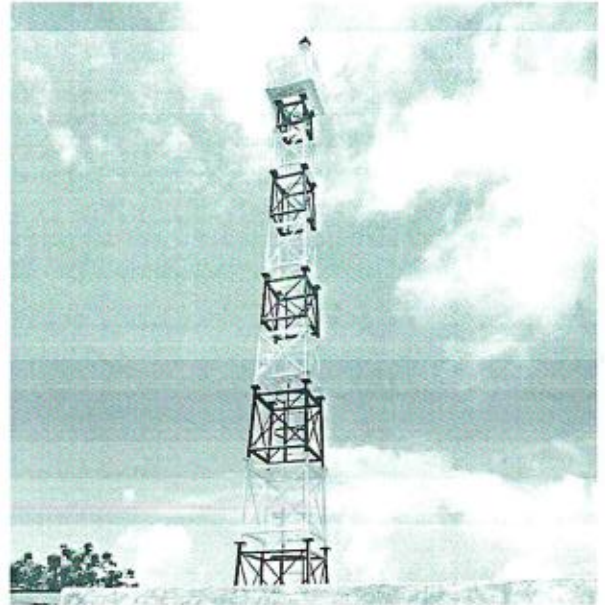


(ii) Maintained Vasco Da Gama Light House



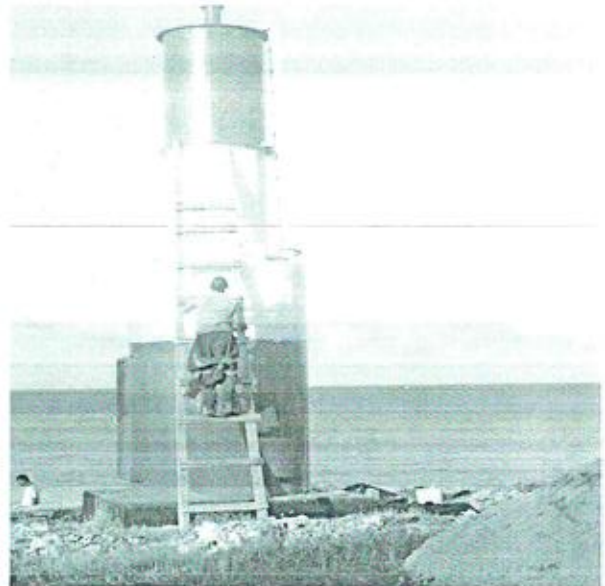
(i) Maintained Vasco rear leading light.

2. Kipini light house mast



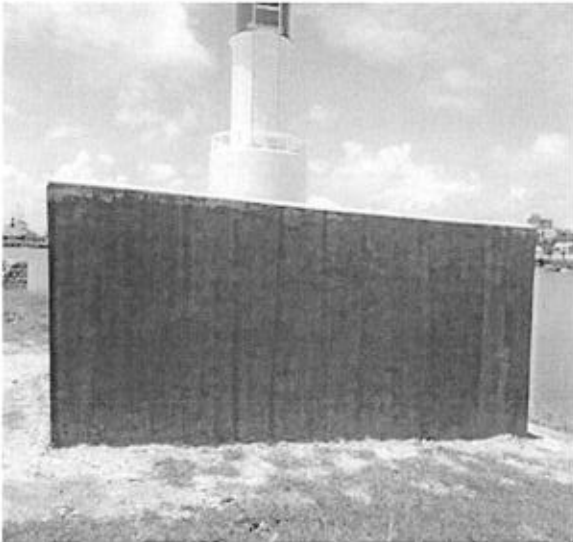
Maintained Kipini Beacon light.

3. The three maintained Likoni Navigational aids



(i) Likoni Front leading light; during construction and the fence constructed.

Kipini light house mast





(ii) The Maintained Likoni rear leading Light (iii) The concrete pillar - Likoni beacon light

Committee observations

906. The Committee observed from the submission of the Accounting Officer during examination that with regards to the masts at Likoni, the rehabilitation and reconstruction were complete and were verified by the OAG.
907. The Committee further observed that the masts at Malindi were complete. However, the masts were reinforced using carbon fibre instead of steel as contained in the bill of quantities. The change of material had no cost implication but the reason for the change was because the carbon fibre was a modern material that was suitable for the coastal environment due to its rust resistance.
908. The Committee observes that since the construction and rehabilitation of the masts were complete, the matter stands resolved.

29.2 Overhaul of Marine Engine

909. Further, the balance includes an expenditure on Marine spares of Kshs. 403,001,000 out of which an amount of Kshs. 23,191,300 relates to overhaul of Marine Engine Model 3412 for a tug boat -Tangulizi II. The services were procured using request for quotations from 2 local suppliers. However, evidence to confirm that the winner was an appoint distributor and dealer of the products in Kenya was not provided for audit review, Further, the winning

bidder did not include in the quotation a detailed schedule of spares to be supplied.

Management Response

910. Section 3(h) of the Public Procurement and Asset Disposal Act (PPDA) 2015 requires that procurements by public entities adhere to the guiding principles of maximizing economy and value for money. The Authority invited bids from the only two known dealers of Caterpillar spares at the time having been contracted earlier for the supply of similar goods. The tender was awarded to the lowest evaluated bidder having quoted Kshs 23,191,300 in accordance with section 86 of the PPADA 2015. The contract provides confirmation from Caterpillar that the awarded vendor is their appointed distributor and dealer of the product in Kenya. Detailed schedule of spares to be supplied is also included.

Committee observation

911. The Committee observed at the time of examination that the contract was awarded to a vendor who is an appointed distributor and dealer of the Caterpillar product, hence the matter is resolved.

29.3 Unsupported Expenditure on Caretaker Service Providers

912. In addition, the balance includes an expenditure of Kshs.584,194,000 in respect of operational/running supplies, out of which an amount of Kshs.12,420,000 relates to payments made to two caretaker service providers at dockyard and at terminal engineering sections. Records provided for audit indicated that the service providers through a letter to the head of administration requested for additional scope of work at the dockyard area. Further, the service providers issued the Authority with invoices totaling to Kshs.11,340,000 in the month of April, 2021 for services rendered for a period of twenty-one (21) months.

913. However, no documentary evidence was provided to confirm that the service was procured in line with Section 91(1) of the Public Procurement and Asset Disposal Act, 2015 which states that, "open tendering shall be the preferred procurement method for procurement of goods, works and services." Further, a signed contract or a local purchase order for the service was not produced for audit verification.

Management Response

914. The management stated that:
- i. That the additional works were falling adjacent to the scope of the original contract area that was meant to be covered by the said firms.
 - ii. These additional areas were not covered by the contract terms yet cleaning services were required.
 - iii. It is noteworthy to mention that the need to make the work environment habitable for users, necessitated the action that was taken.

Committee observations

915. The Committee observed from the explanation of the Accounting officer at the time of examination that there was a court injunction stopping the award of the contract that led to a delay in the commencement of the contract for cleaning service.
916. The Committee observed that the management issued a one-year contract to contractor undertaking the works under the previous contract to undertake cleaning works during the period of suspension of the award of the new contract.
917. Further, the Committee observed that when the injunction was lifted, the Authority proceeded to grant a three-year contract to another firm.
918. The Committee observes that the matter stands resolved.

Committee recommendation

919. The Committee reprimands the Accounting Officer for breaching section 139 of the Public Procurement and Asset Disposal Act and directs that the Accounting Officer should henceforth ensure that procurement procedures are in line with the Act.

29.4 Unsupported Expenditure on Provision of Services by National Youth Services in Kisumu

920. The balance also includes an expenditure on repairs of port infrastructure balance of Kshs.1,414,815,000, out of which an amount of Kshs.71,767,166 relates to payments made to National Youth Service for rehabilitation of Kisumu Port. The following observations were made:
- i. The amount of Kshs.71,767,166 includes advance payments of Kshs.47,663,594 for works and services to be provided by NYS while Kshs.24,1023,57 was reimbursement of expenditure incurred by the

Service. However, no reports of work done were produced to support utilization of the advance payments.

- ii. Further, included in the amount of Kshs.71,767,166 is Kshs.1,000,000 which was released without evidence of budgetary provision detailing how the funds were to be utilized.
- iii. The amount of Kshs.71,767,166 also includes daily subsistence allowances of Kshs.15,317,200 for supervisors and senior staff of NYS for which evidence of utilization was provided for audit verification.
- iv. It was noted during physical verification done in the month of December, 2021 that already existing works valued at Kshs.40,456,257 were demolished. The works were claimed to have been on land delineated by the Kenya Shipyards Limited, a Company under the Ministry of Defense.

921. In the circumstances, the regularity, completeness and accuracy of the expenditure of Kshs.167,174,653 incurred on repairs of port infrastructure could not be confirmed.

Management Response

922. The management stated that—

- i. The National Youth Service (NYS) was engaged by the Government to undertake rehabilitation of the Kisumu port and port infrastructure around Lake Victoria with funding from the Authority.
- ii. NYS provided schedules (Budgets) of works to be undertaken to the Authority for funding by the Authority.
- iii. The breakdown of expenditure of Kshs 71,767,166 is provided below:

Document No	Doc. Date	Amount (Kshs)	Text
1900290519	06.10.2020	15,913,416.23	Rehabilitation of Kisumu and Kendu Bay Ports
1900283997	10.02.2020	1,000,000.00	Clearing encroaching water hyacinth at Kisumu Port
1900290685	07.10.2019	5,225,516.00	Back filling exercise at Kisumu Port
1900290690	02.10.2019	8,190,155.45	Rehabilitation of Port facilities around Lake Victoria
1900290682	16.08.2019	10,000,000.00	Clearing works at Kisumu, Homabay, Mbita, Asembo Bay

Document No	Doc. Date	Amount (Kshs)	Text
1900280355	13.08.2019	4,000,000.00	Cleaning Works at Homabay, Mbita, Kendu Bay Jetties
1900279753	15.07.2019	14,400,000.00	Face lifting & renovation of buildings at Kisumu Port
1900279756	03.07.2019	5,047,878.00	External paintings of buildings at Kisumu Port
1900279093	18.06.2019	7,990,200.00	Kisumu Port rehabilitation & cleaning exercise
		71,767,165.68	

- iv. The amount of Kshs 1,000,000 paid to the NYS was for clearing the encroaching water hyacinth at the Kisumu Port.
- v. All the buildings that were rehabilitated or renovated and later handed over to the Kenya Shipyards Ltd (KSL) were compensated for through the rehabilitation of the link span by KSL.

Committee observations

- 923. The Committee observed from the submissions of the Accounting Officer during the examination that there was a Cabinet directive to engage the NYS in the rehabilitation of Kisumu Port works.
- 924. The Committee further observed that the NYS undertook the rehabilitation, and works were completed and handed over to Kenya Shipyards Ltd.

Committee recommendation

- 925. The Committee directs that within three (3) months upon adoption of this report; the Accounting Officer should provide the documentation on the directive that allowed them to engage the NYS to the OAG for verification.

30. Rehabilitation of Kisumu Port and Deepening of Mbita Causeway

- 926. As disclosed in Note 11 to the financial statements, the statement of financial position reflects repeated work in progress balance of Kshs. 59,120,480,000 under basic construction out of which an amount of Kshs. 260,000,000 relates to maintenance, dredging works at Kisumu Ports and deepening of Mbita Causeway. However, review of documents and information provided by Management revealed the following anomalies:

- i. The Authority has a multiyear capital expenditure project budget of kshs. 500,000,000 for the FY 2019/2020. Following an environmental impact study, the management advertised provision of the works through a tender in April 2020. However, the tender was non-responsive and therefore cancelled
- ii. The tender was re-advertised in June 2020 which was also cancelled due to non- responsiveness upon evaluation Committees recommendation.
- iii. The CS Ministry of Defence (MOD) notified the CS Ministry of Transport Infrastructure, Housing Urban Development and Public works that a Presidential directive instructed that dredging of Mbita and Kisumu Ports be expediated to enhance water transport in Lake Victoria Region. Further, the letter indicated that the Ministry of Defence had conducted a reconnaissance and established the scope of work at estimated cost of Kshs. 260,000,000. Through the letter, it was proposed that MOD undertakes the work as a security project to fast track implementation.
- iv. The authority vide letter reference MCS/4/7/2009 dated 5 January 2020 requested the CS – National Treasury for Authority to Transfer funds for the estimated project cost of Kshs. 260,000,000 to the National Treasury for reallocation to Ministry of Defence for implementation. The same was approved and was followed by transfer of funds on 13 January 2021.
- v. However, the MOD had not provided details of the extent of completion and utilization of the amount of Kshs.260,000,000 as at the time of this audit.

927. In the circumstances, the existence, completeness and accuracy of the amount of Kshs.260,000,000 treated as work in progress could not be confirmed.

Management Response

928. The management stated that the Authority transferred Kshs 260 million for dredging to the National Treasury for reallocation to the Ministry of Defence (MOD) following a Cabinet directive.

929. The Authority was however not involved in any way in the supervision or monitoring of the progress of the dredging works. Information regarding the completion and utilization of the amount of Kshs 260 million can only be obtained from MOD who were the implementing agency for the works.

Committee observations

930. The Committee observed at the time of examination that the Accounting Officer did not refute the fact that money was transferred from the Authority to the National Treasury.
931. Further, the Committee observed that the money was transferred to the National Treasury for reallocation following a Cabinet directive, and at the time of reporting, it was no longer recorded in the financial statements of KPA.
932. The Committee observes that since the money was transferred to the National Treasury for reallocation following a Cabinet directive, the matter is resolved.

31. Trade and Other Payables

933. The statement of financial position reflects Kshs.15,353,047,000 in respect of trade and other payables which as disclosed in Note 31 to the financial statements includes an accrued expenditure of Kshs.3,455,799,000, out of which an amount of Kshs.563,538,760 and Kshs.587,876,217 relates to accrued bonuses for the financial years 2018/2019 and 2019/2020, respectively. However, the Board's approval of the provision for payments was not provided for audit verification. In the circumstances, the accuracy of the accrued expenditure of Kshs.3,455,799,000 could not be confirmed.

Management Response

934. The management stated that the accrued bonuses for the financial years 2018/2019 and 2019/2020 of Kshs 563,538,760 and Kshs 587,876,217 respectively have not been paid. For purposes of complying with the matching principle of accounting the Authority accrued bonus based on performance. The bonuses were adjusted to the General Reserves in FY 2021/2022 awaiting the approval. Bonus payments are provided for under paragraph C.8 of the Kenya Ports Authority Human Resources Manual.

Committee observation

935. The Committee observed from the explanation of the Accounting Officer at the time of examination that the current status was that the bonuses had been paid, hence the matter is resolved.

32. Property, Plant and Equipment

32.1 Irregular Capitalization of and Depreciation of Non-Existent Assets

936. The balance includes a balance of Kshs.117,582,946,000 in respect to basic constructions out of which an amount of Kshs.27,156,080 relates to net book value of fences around two parcels of land in Kilifi. However, during physical verification of assets in the month of December, 2021, it was noted that the fences did not exist on the said properties. The value of the fences has been carried in the assets register since capitalization in February, 2017.

Management Response

937. The management stated that when capitalization was done, the fence was existing and was later demolished by squatters invading the land. The same was impaired on 30th June 2022 to recognize the loss in the books vide doc. 9055932 and 9055934. The Authority shall seek the appropriate approvals for write off once the investigations are concluded.

Data Entry View					
Document Number	9055932	Company Code	1000	Fiscal Year	2022
Document Date	30.06.2022	Posting Date	30.06.2022	Period	12
Reference	TAKAUNGU B FENCE	Cross-Comp.No.			
Currency	KES	Texts exist	<input type="checkbox"/>	Ledger Group	

C...	Itm	PK	Account	Description	Amount	Curr.	Tx	Amount in LC
10...	1	40	600784	IMPAIRMENT LOSS/(G)	9,444,014.21	KES		9,444,014.21
	2	50	500208	IMPAIRMENT OF PROPET	9,444,014.21-	KES		9,444,014.21-

Data Entry View					
Document Number	9055934	Company Code	1000	Fiscal Year	2022
Document Date	30.06.2022	Posting Date	30.06.2022	Period	12
Reference	TAKAUNGU A FENCE	Cross-Comp.No.			
Currency	KES	Texts exist	<input type="checkbox"/>	Ledger Group	

C...	Itm	PK	Account	Description	Amount	Curr.	Tx	Amount in LC
10...	1	40	600784	IMPAIRMENT LOSS/(G)	15,969,428.29	KES		15,969,428.29
	2	50	500208	IMPAIRMENT OF PROPET	15,969,428.29-	KES		15,969,428.29-

Committee observation

938. The Committee observed at the time of examination that the impairment loss was accounted for in the books of KPA, hence the matter stands resolved.

32.2 Concrete Works at Nairobi Shed 1 Phase 1

939. Further, the balance includes an expenditure on repairs of port infrastructure of Kshs.1,414,815,000, out of which an amount of Kshs.145,419,644 relates to concrete works at Nairobi Inland Container Depot Shed 1. No explanation was given for treating the costs of the concrete works as part of operating expenses instead of capital expenditure. Review of the bill of quantities and physical inspection of the works in the month of November, 2021 revealed that the works were carried out in a space that used to be a shed yet the bills of quantities provided for general clearance at a cost of Kshs.6,163,830. The Management did not provide evidence of existence of any vegetation or original state of the area to justify the cost of clearance.

Management Response

940. The management stated that the location of site was in old ICD internal transverse road and part of old Western (now ELEMI/SHED2) Yard. The item on the BOQ for Site clearance and demolitions amounting to KES. 6,163,830.00 included quantities for demolition former Shed A and an Electrical Sub-Station at ICD Nairobi. In addition, there was also clearance of massive debris from the Mega SGR Project and demolitions of the failed hard surface. The management has attached pictures of the demolished buildings in question to demonstrate the magnitude of the assignment. The management further clarifies that the works were capitalized as shown below;

G/L Account	104001	WIP/BASIC CONSTRUCTION	
Company Code	1000	Kenya Ports Authority	Doc. no. 1161631
Asset	10200142	0	CONCRETE WORKS FROM GL 600261

Line Item 2 / Credit asset / 75 Invoice receipt for / 159

Amount	92,140,895.50	KES	
--------	---------------	-----	--

W/o Cash Dscnt

Additional Details

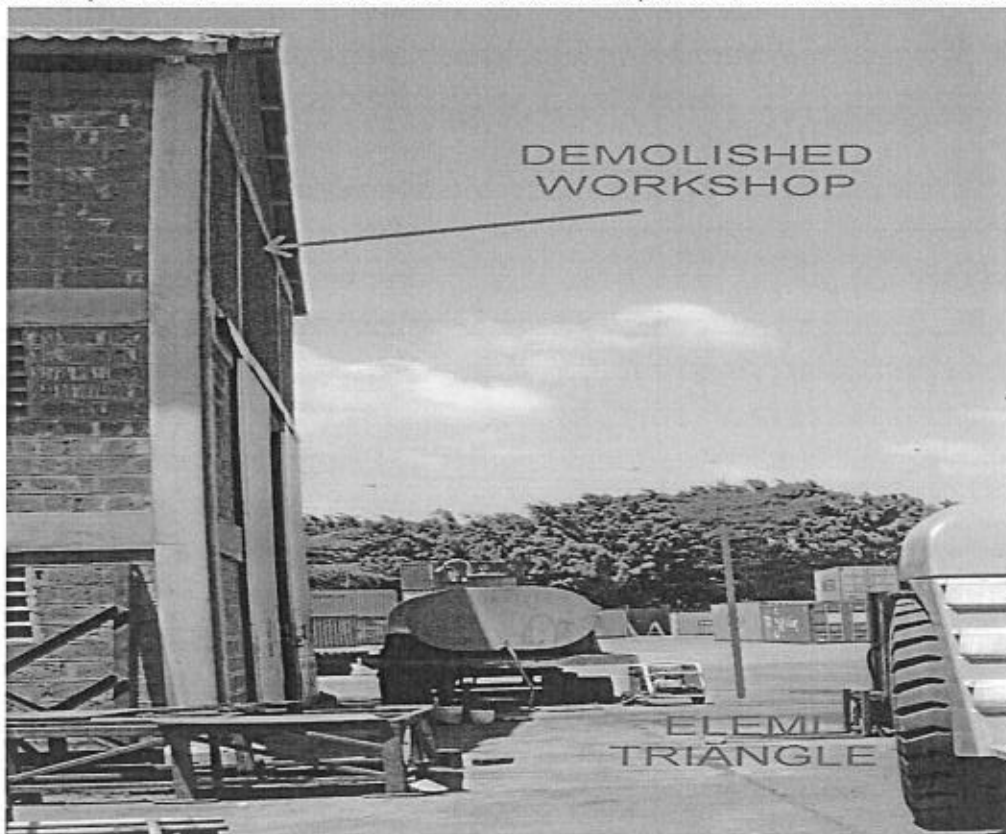
Asset Val. Date	15.06.2021		
Asset	10200142	0	
Cost Center		Order	

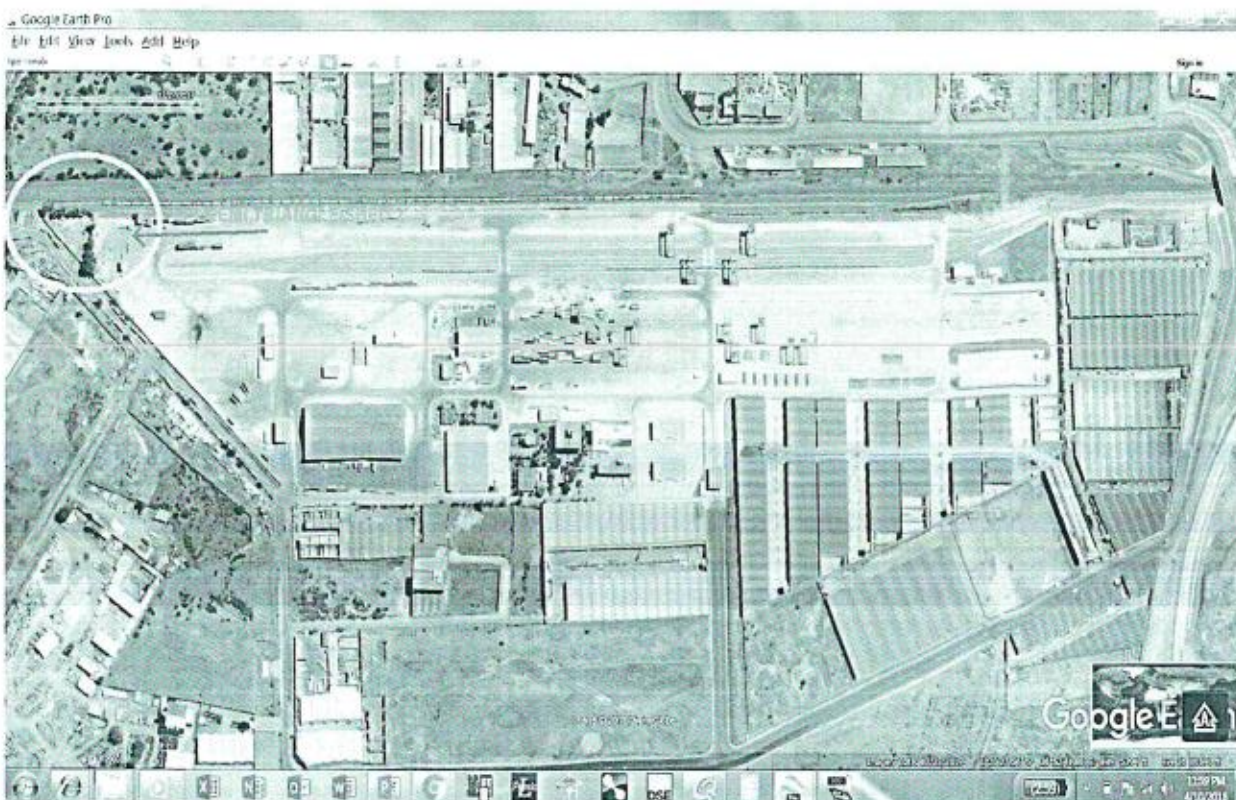
[More](#)

Assignment

Text	Capt.of concrete works at shed 1-4500083236	Long text
------	---	---------------------------

It was first adjusted to WIP 10200142 and later capitalized under asset 250099.





Committee observation

941. The Committee observed at the time of examination that the issue was on capitalization and was addressed by the management. Further, the works involved the clearing of debris and demolition of hard surfaces, hence the matter is resolved.

32.3 Concrete Works at Makongeni

942. In addition, the balance includes work in progress balance of Kshs.93,568,938,000, out of which an amount of Kshs.313,098,245 relates to concrete works at Makongeni Inland Container Depot. Information and records provided for audit indicated that the Authority was not in possession of the land, did not have ownership documents for the same or was it utilizing the asset.

943. In the circumstances, the ownership and rights and obligations of concrete works valued at Kshs.313,098,245 could not be confirmed.

Management Response

944. Administrative action was taken against the culpable staff. The works were investigated by DCI and the matter is before the courts.

Committee observation

945. The Committee observed that there is an active case against the employees in court.

Committee recommendation

946. The Committee recommends that pursuant to Standing Order 89, the issue is *subjudice* since the matter is before the court.

32.4 Supply and Commissioning of Forklifts

947. The balance also includes an amount of Kshs.31,046,475,000 in respect of equipment, motor vehicles and furniture. Included in the balance is an amount of Kshs.58,612,668 in respect of three (3) sixteen-ton and two (2) five-ton forklifts. Records provided for audit indicated that the Management advertised for supply and commissioning of forklifts vide a tender on 9 July, 2019. The tender was processed and awarded to one local supplier at a total bid price of Kshs.67,680,000. However, the following anomalies were noted:

- i. The delivery period was six (6) months from the date of award and the winning bidder issued a performance bond of Kshs.6,768,000, being 10% of the amount of the contract from a local bank dated 11 December, 2019 which was valid until 11 March, 2020. However, the forklifts were supplied in November, 2020 after expiry of the bond and no evidence of renewal of the same was provided for audit review.
- ii. Further, the contract provided for liquidated damages at a rate of 2.5% per week of 1/3 of the contract price for delayed delivery. The forklifts were delivered 10 weeks later on 28 October, 2020 from the expected date of 15 August, 2020. However, Management did not charge the liquidated damages amounting to Kshs.5,640,000.
- iii. Through a Memo from the Senior Mechanical Engineer indicated that the forklifts were jointly inspected against itemized technical parameters and found to lack the requirement for truck control and monitoring but noted that the equipment was to be delivered and installed by an engineer from the Company. The Management did not provide evidence that this was done.
- iv. One of the mandatory requirements in the tender document was 'a Duly Completed Original Manufacturer's Authorization Form' by the manufacturer where the bidder is not the manufacturer and a written guarantee of the tenderer's ability to supply spares for at least 10 years for the forklifts. The winning bidder indicated that the firm would supply Caterpillar equipment and provide Supplier's Authorization and Manufacturer's Warranty. However, according to Caterpillar website, Mantrac (K) Limited is the only authorized supplier of Caterpillar equipment and the spares. Further, Mantrac Kenya confirmed that the supplier's Authorization and Manufacturer's Warranty were not from Mantrac Group. In addition, the contract data sheet Clause 21 of the General Conditions of the Contract Clause 24.4 provided that, 'in the event of corrupt or fraudulent practice or any breach of integrity declaration, the supplier shall be liable to pay to the procuring entity 100% of the contract price'. Provision of forged document constituted a fraudulent practice. However, there is no evidence that Management invoked this Clause or explained the failure to do so.
- v. The contract provided for training at a cost of Kshs.200,000 at the factory site. Although the amount was spent, Management did not provide any evidence that the training was done.

948. A physical inspection of the equipment and spares revealed the following matter:
- i. The equipment had CAT logo which was not similar to the known CAT equipment logo fitted on the equipment and was peeling off.
 - ii. The equipment was fitted with Cummins engine which is not a brand used by Caterpillar on their equipment.
 - iii. All the spares were labelled in Chinese language. However, the bidder had indicated that the spares would be supplied from European countries.
 - iv. The spares had not been captured by the stores department staff due to difficulty in identification and matching with existing spares and as such the same had not been utilized.
949. In the circumstances, the authenticity and value of the forklifts, and validity and accuracy of the expenditure of Kshs.58,612,668 incurred on the fork-lifts could not be confirmed.

Management Response

950. The management stated that whereas the performance bond was to expire on 11th March 2020, following the outbreak of COVID 19 there were disruptions in the global supply chains. Consequently, the Government of Kenya vide presidential directive and gazette notice issued a restriction of movement and related measures to curb the spread of the pandemic. Further, the contractor, vide their correspondence dated 28th August 2020 expressed their inability to proceed with delivery timelines as envisaged due to the effects of Covid 19. The lockdown in the Country by the Government as well as disruptions in global supply chain as a result of the Pandemic was a form of force majeure as spelt out in Clause 26 of the tender document (which formed the contract). This provided that incase of force majeure, the contractor shall continue to perform his obligations under the contract as far as is reasonably practical and shall seek all alternative reasonable means of performance not prevented by the force majeure event. Bond renewal was not possible due to covid containment measures then.
951. Despite the foregoing, the Contractor performed the contract reasonably and delivered the goods on 2nd November 2020, within reasonable time following the lifting of the Government restrictions vide presidential directive issued on 20th October 2020. Therefore, there was no loss of funds as result of

expiry of the performance bond. Management could not invoke liquidated damages because the delays were as result of unforeseen circumstances.

952. Further, the contract required that the supplier would deliver and install the control and monitoring system. The truck control and monitoring which provides the ability to troubleshoot using a diagnostic tool, is now available and working.
953. The tender was evaluated in accordance with criteria and requirements set out in the tender document. The Authority relied on documents submitted by the bidder. However, the physical verifications of information could not be undertaken due to onset of the COVID -19 pandemic and restriction of movement at that time. It is however noted that Mantrac Egypt whose documents were submitted by the bidder provided evidence of authorization as dealers of Caterpillar spares and equipment. From the documents submitted the equipment was to be manufactured by Mantrac of Smart Village, Cairo Egypt. The same authorized M/s Belyne Freight & Logistics Limited vide supplier authorization dated 19th August 2019 was attached to the bidding documents.
954. On the issue of training. The training was to be undertaken at the factory site. However, following the outbreak of Covid-19 and subsequent restrictions of movement, the Authority could not send officers. The equipment supplier has since refunded to the Authority KES 200,000 paid as factory site training cost. The local training was carried out on 16th November 2023 as per attached evidence,
955. Further, the management stated the following;
- i. On the CAT logo, this is normally verified during pre-shipment inspection which was not done due to Covid-19 outbreak. However, upon delivery the equipment conformed to the technical specifications as per the requirements in the tender document.
 - ii. Clause 7.4.3 of the specifications outlined in the tender document required bidder to provide either of the following brands of the power unit; Cummins, Perkins, Volkswagen, Toyota, Kubota or Yanmar engines. The said bidder was in compliance with the said specifications as they delivered a Cummins engine.
 - iii. The tender was evaluated based on the criteria set out in the tender document and specifications there in prepared in accordance with section 60 of the Public Procurement and Asset disposal Act 2015 which dis-allows use of Country of origin in writing specifications. The Country

of origin was not a requirement by the authority. However, the equipment is still under warranty and vide correspondence 28th June 2022 the Authority requested the Contractor to provide an English translation. Further note, manufacturing companies often acquire some assembling parts from China or the parts producing companies outside Europe.

956. The supplier was requested to arrange and provide the list of spares in English which he later did and the stores ensured that the descriptions of each of the spares were inscribed on the packages for ease of identification.

Committee observation

957. The Committee observed at the time of examination that although the forklift was supplied, there was no evidence adduced by the management to prove that the product supplied was from Caterpillar.

Committee recommendation

958. The Committee directs that within three (3) months upon the adoption of this report, the Accounting Officer of KPA to submit the quotations for the supply of the forklifts to the OAG for verification.

33 Accrued Liability for Defined Contribution (DC)/Defined Benefit Scheme (DB)

959. The statement of financial position reflects retirement benefit on current liability of Kshs.3,576,200,000 and current liability of Kshs.535,200,000 all totaling to Kshs.4,111,400,000. Audit review of the Actuarial valuation report of the scheme indicates a total of Kshs. 3,490 active members under the defined benefit scheme (DB), out of whom 2,675 are members who moved to defined contribution scheme (DC). Although a portion of their pension benefit was still held in defined benefit scheme. However, the actuarial valuation report indicated that the valuation of assets was based on 3,490 members instead of 795 members under DB scheme, contrary to the National Treasury Circular Ref No. EPN171/07 Vol.Q(94) dated 16 June 2011 which directed the Authority not to grant evaluation to those who choose to move to the DC schemes or those who had to move to the DC scheme because they were below 45 years. Evaluation may have materially overstated by inclusion of Outstanding define benefits portion retained when the 2,675 members moved to the defined contribution scheme. In the circumstances, the accuracy and fair

presentation of retirement benefits liability of Kshs. 4,111,400,000 could not be confirmed.

Management Response

960. The Management stated that the National Treasury circular No. 18 of 2010 required all government entities' Pension Schemes to convert from DB Schemes to DC schemes. The circular required all DB Schemes converting to DC Schemes to be fully funded. However, KPA Pension Scheme was underfunded and therefore could not be converted fully to DC Scheme.
961. The National Treasury Circular No. 18 of 2010 under clause 1 (b) indicated that "the conversion process will be guided by the provisions of the RBA Act, Regulations and guidelines issued by the RBA". The Retirement Benefits Authority issued Prudential guideline RBA 001 on Schemes conversion on 17th August 2012 clauses 3.1 & 3.2 require underfunded DB Schemes to undertake annual actuarial valuations for all members. Prudential guideline RBA 001 makes it mandatory for Schemes to allow for revaluation of past accrued benefits where members cease to accrue any future benefits.
962. The letter from the Director of Pensions reference EPN 171/07 Vol Q (94) dated 16 June 2011 in response to the letter from the Scheme Actuary M/s Alexander Forbes provided options of either freezing the benefits or continuing with the actuarial valuation considering the liability obligations on the sponsor. It did not make it mandatory that the benefits must be frozen.
963. This is supported by the Prudential Guideline Number 001 on Schemes conversion issued on 17th August 2012. Clause 6.1.3 of the Prudential Guideline RBA 001 states that:

Prudential Guideline No. RBA 001

6.1.3 The trustees sets up a remedial action plan to fund the scheme's deficit within an appropriate period but no more than six (6) years. No transfers to the Defined Contribution scheme shall be made from the Defined Benefit scheme until the deficit has been cleared. Statutory valuations of the Defined Benefit scheme shall be carried out as long as it's operational.

964. Members who were in the DB Scheme and aged below 45 years joined the DC scheme while retaining their benefits in the DB Scheme. DB Members who moved to the DC scheme effective 01 January 2013 could not move their

accrued benefits to the DC Scheme as at 31 December 2011 when the decision was made. The DB Scheme is currently holding accrued liability for members who joined the DC Scheme while members who remained in the DB Scheme continue to accrue future benefits from 31 December 2012. Members who are in both DC scheme and DB scheme are only accruing future benefits effective 01 January 2013 from the DC scheme. So, there is no double benefit for those members.

965. Based on the Treasury circular No. 18 of 2010 and RBA Prudential Guideline 001, actuarial valuation was done for 3,490 members (2,675 who are in both DB & DC Schemes while 795 members were in only in DB Scheme). The DB Scheme closure structure and the DC Scheme formation structure were all approved by the Retirement Benefits Authority and National Treasury.

Committee observations

966. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had anchored the operations of the retirement benefits scheme on the prudential guidelines that stated the method of handling deficits that arose from the migration of members from the DB to the DC scheme and captured the deficit in their financial statements.

967. The Committee further noted that the management obtained approvals from the National Treasury and the Retirement Benefits Authority to convert from DB schemes to DC schemes.

968. The committee observes that since the Authority obtained approvals from the National Treasury and the Retirement Benefits Authority with regards to migration of members from the Defined Benefits to Defined Contribution Scheme, the matter stands resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

34 Non-Compliance with the Public Service Commission Human Resource Policies and Procedures Manual, 2016

969. Review of the payroll data provided for audit review indicated that as at 30 June, 2021, the Authority had paid basic salary to 6,519 employees. However, analysis of the payroll records revealed that out of the 6,519 employees, 415 employees committed their salary beyond the two thirds of the basic, contrary to Paragraph C.1(3) of Public Service Commission Human Resource Policy and Procedures Manual, 2016.

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

Management Response

971. The observation has been noted. Overcommitment of salary was caused by various reasons including the following:

- i. Court Attachments
- ii. Recoveries based on staff training as per HR Manual 2017 G.7.(h) " An employee will forfeit 10% and 20% of his basic salary while attending a long course locally or overseas respectively. The employee will also forfeit all allowances except house allowance for the duration of the course"
- iii. Prorated salaries for retiring Staff retiring in a payroll month cycle.
- iv. Medical bills
- v. Increase of rent for Staff Houses
- vi. Staff who have increased their Shares.
- vii. Staff on sick leave/Hospital admission

972. The above notwithstanding, the Authority issued a circular Ref: HR/1/6/66 dated 21st June 2021 to all staff to caution and underscore the need of complying with the Human Resources Manual 2017 and the Employment Act 2007.

973. In addition, the staff who are earning below a third were addressed to show cause why disciplinary action should not be taken against them as per the attached Memo HR/7/4/559088/CON dated 18th June 2021 and letter Ref: HR/7/4/559088/CON dated 21st July 2021 on Financial/Pecuniary Embarrassment. The Authority has been continuously monitoring progress on this matter as part of continuous improvements. Attached are sample show cause letters on overcommitment of salary and response letters from staff who were addressed.

Committee observations

974. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management of KPA did not refute the fact that it had breached the Public Service Commission Human Resource Policies and Procedures Manual, 2016, on Over Commitment of Salary.

975. Further, the Committee noted that the management had taken steps to remedy the situation by issuing a circular cautioning employees to comply with the 1/3 rule on basic salary.

Committee recommendation

976. The Committee reprimands the Accounting Officer for breaching section C.1(3) of the Public Service Commission Human Resource Policies and Procedures Manual, 2016 and section 19(3) of the Employment Act, Cap 226 on the a-third basic rule and directs that the management should henceforth ensure that officers do not overcommit more than a third of their salaries.

35 Non-Compliance with the National Cohesion and Integration Act, 2008

977. Review of establishment indicated that the Authority had a total of 6,519 employees as at 30 June, 2021, out of whom 2,258 (35%) were from one community. This is contrary to Section 7(2) of the National Cohesion and Integration Act, 2008 which states that, "No public establishment shall have more than one third of its staff from the same ethnic community."

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

Management Response

979. The management stated that the observations have been noted and added that the Authority is currently renewing efforts to ensure compliance with Section 7(2) of the National Cohesion and Integration Act, 2008. From the ethnic composition analysis of the Authority's employees tabulated below, the Mijikenda have for the past 3 years reduced from 35.69% (2019) to 34.44% (2022) while employees from the Taita, Teso, Pokomo, Kenyan Somali, Orma and Bajuni tribes have increased.

No.	Ethnic Group	2019	2019%	2020	2020%	2021	2021%	2022	2022%
1	Mijikenda	2,369	35.69%	2,325	34.99%	2,274	35.16%	2,317	34.44%
2	Luhya	503	7.58%	517	7.78%	502	7.76%	510	7.58%
3	Kalenjin	410	6.18%	402	6.05%	389	6.01%	387	5.75%
4	Luo	759	11.43%	764	11.50%	733	11.33%	753	11.19%
5	Kamba	503	7.58%	496	7.46%	479	7.41%	486	7.22%
6	Taita	506	7.62%	510	7.67%	496	7.67%	532	7.91%
7	Taveta	25	0.38%	25	0.38%	23	0.36%	22	0.33%
8	Kikuyu	444	6.69%	483	7.27%	471	7.28%	494	7.34%

No.	Ethnic Group	2019	2019%	2020	2020%	2021	2021%	2022	2022%
9	Teso	10	0.15%	12	0.18%	12	0.19%	16	0.24%
10	Samburu	7	0.11%	7	0.11%	7	0.11%	8	0.12%
11	Kisii	225	3.39%	228	3.43%	220	3.40%	224	3.33%
12	Nubi	11	0.17%	12	0.18%	12	0.19%	14	0.21%
13	Suba	7	0.11%	7	0.11%	6	0.09%	7	0.10%
14	Kuria	4	0.06%	4	0.06%	4	0.06%	5	0.07%
15	Embu	30	0.45%	30	0.45%	30	0.46%	33	0.49%
16	Pokomo		0.00%	107	1.61%	107	1.65%	114	1.69%
17	Meru	69	1.04%	73	1.10%	72	1.11%	74	1.10%
18	Kenyan Arab	87	1.31%	84	1.26%	82	1.27%	79	1.17%
19	Swahili	360	5.42%	360	5.42%	355	5.49%	348	5.17%
20	Kenyan Asian	4	0.06%	5	0.08%	5	0.08%	4	0.06%
21	Gala	1	0.02%	1	0.02%	1	0.02%	1	0.01%
22	Rendile	1	0.02%	1	0.02%	1	0.02%	1	0.01%
23	Kenyan Somali	73	1.10%	73	1.10%	70	1.08%	82	1.22%
24	Maasai	34	0.51%	34	0.51%	34	0.53%	37	0.55%
25	Borana	46	0.69%	46	0.69%	44	0.68%	57	0.85%
26	Orma	19	0.29%	19	0.29%	19	0.29%	29	0.43%
27	Ogaden a	0	0.00%	0	0.00%	0	0.00%	0	0.00%
28	Ajuran	0	0.00%	0	0.00%	0	0.00%	0	0.00%
29	Gari	0	0.00%	0	0.00%	0	0.00%	0	0.00%
30	Digodia	0	0.00%	0	0.00%	0	0.00%	0	0.00%
31	Warden	0	0.00%	0	0.00%	0	0.00%	0	0.00%
32	Bajuni	0	0.00%	0	0.00%	0	0.00%	74	1.10%
33	Baluchi	6	0.09%	6	0.09%	6	0.09%	6	0.09%
34	Mchang-amwe	0	0.00%	0	0.00%	0	0.00%	0	0.00%
35	Mnyasa	5	0.08%	5	0.08%	5	0.08%	5	0.07%
36	Mjomvu	0	0.00%	0	0.00%	0	0.00%	0	0.00%
37	Dorobo	0	0.00%	0	0.00%	0	0.00%	0	0.00%
38	Ogiek	0	0.00%	0	0.00%	0	0.00%	0	0.00%

No.	Ethnic Group	2019	2019%	2020	2020%	2021	2021%	2022	2022%
39	Nyamwezi	2	0.03%	2	0.03%	2	0.03%	2	0.03%
40	Ngazija	0	0.00%	0	0.00%	0	0.00%	0	0.00%
41	Vumba	0	0.00%	0	0.00%	0	0.00%	0	0.00%
42	Ugandan	0	0.00%	0	0.00%	0	0.00%	0	0.00%
43	Rwande se	1	0.02%	1	0.02%	1	0.02%	2	0.03%
44	Burundia n	0	0.00%	0	0.00%	0	0.00%	1	0.01%
45	Mtagan a	1	0.02%	0	0.00%	0	0.00%	0	0.00%
46	Tanzania n	1	0.02%	1	0.02%	1	0.02%	1	0.01%
47	Uganda n	5	0.08%	5	0.08%	5	0.08%	3	0.04%
48	Others	110	1.66%	0	0.00%	0	0.00%	0	0.00%
	Total	6,638		6,645		6,468		6,728	

The Authority is actively increasing its efforts to comply with the Law, as demonstrated by the fact that out of 297 staff recruited in FY 2021/2022, only 36 (12%) were from the Mijikenda Community.

Committee observation

980. The Committee observed from the explanation of the Accounting Officer at the time of examination that the management had a number of officers from the minority community employed in the subsequent recruitment process.

981. The Committee observes that since the management has endeavored to comply with the Article 130(2) of the Constitution on the reflection of regional and ethnic diversity in public entities and the National Cohesion and Integration Act, Cap 7N, the matter stands resolved.

Committee Recommendation

982. The Committee recommends that the OAG should endeavour to include a paragraph on the ethnic diversity of officers in public entities in future audit cycles.

36 Procurement from Suppliers with Expired Contracts

983. Included in Note 10 to the financial statements for the year ended 30 June 2021, is an expenditure on Uniforms and clothing of kshs. 164,919,000. Documents produced for Audit review indicated that two local companies were awarded contracts in 2011 for supply of various uniforms and personal protective equipment for a period of 2 years. The contract was to end in 2013 but the same was extended until June 2015. In June 2015, the Authority tender Committee approved the extension of the contract for a further 1 year until June 2016 and again to December 2016 without justification. In addition, management did not provide approval for the extensions beyond 2016 for audit review. The Authority however procured uniforms and personal protective equipment amounting to kshs. 53,408,855 based on expired contracts. Further the Authority signed another uniform supply contract with a local company in 2017 for 3 years and procured the items at a cost of kshs. 1,427,838 during the year under audit review. However, no evidence of a new contract or an extension of the existing contract was produced for audit verification.

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

Management Response

985. The management stated that the Authority was undergoing rebranding and development of new uniforms and PPEs manual. Subsequently, Management extended the previous contracts until such a time as a new brand manual and uniforms and PPEs policy and manual were developed. The contracts were extended as the Staff were entitled to these items as per the Occupational health and Safety requirements for the workplace.

986. The subject tenders were procured under the Public Procurement Act 2005. The Tender Committee at its meeting ref. 001/2016-17 held on 20th July 2016 approved extension of contract for supply of uniforms tender number KPA/137/2010-11/PSM for a period of 6 months or until another contract came into place. Consequently, the Authority advertised open tenders vide Tender no. KPA124/2019-2020/PSM and KPA125/2019-2020/PSM for supply of uniforms and new contracts were awarded.