

REPORT OF THE AUDITOR-GENERAL ON KENYA MARITIME AUTHORITY FOR THE YEAR ENDED 30 JUNE 2017

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of Kenya Maritime Authority set out on pages 1 to 38, which comprise the statement of financial position as at 30 June 2017, and the statement of financial performance, statement of changes in net assets, statement of cash flows and statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, except for the effect of the matters described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of the Kenya Maritime Authority as at 30 June 2017, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis) and comply with Kenya Maritime Authority Act, 2006.

In addition, as required by Article 229(6) of the Constitution, except for the matters described in the Basis for Qualified Opinion and Other Matter sections of my report, based on the audit procedures performed, I confirm that, nothing has come to my attention to cause me to believe that public money has not been applied lawfully and in an effective way.

Basis for Qualified Opinion

1.0 Property, Plant and Equipment

The statement of financial position reflects a balance of Kshs.396,495,684 as at 30 June 2017 in respect of property, plant and equipment as detailed in Note 22 to the financial statements. Audit verifications revealed the following anomalies:

1.1. Construction of Office Block

Included in trade receivables from exchange transactions balance of Kshs.266,166,914 at note 17 to the financial statements is other non-trade figure of Kshs.183,837,788 as at 30 June 2017. The balance of Kshs.183,837,788 includes advance payment of Kshs.182,523,994 to the contractor for the construction of office headquarters. Information available indicates that the contract was awarded to the winning bidder at a price of Kshs.1,825,239,939. However, audit verification of the procurement records revealed the following:

1.1.1 The tender sum was corrected upwards by the tender evaluation committee leading to an increase of Kshs.97,063,521 on the bidder's quote of Kshs.1,728,176,418 to award price of Kshs.1,825,239,939. This was contrary to Section 82 of the Public Procurement and Assets Disposal Act, 2015 which states that, " the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity". Although the management has argued that the decision was based on Section 50 of the Public Procurement and Disposal Regulations, 2006, however, Section 82 of the Public Procurement and Assets Disposal Act, 2015 is not subject to application of Regulations. As a result, the decision was irregular.

Consequently, the irregularity led to loss of Kshs.97,063,521 of public funds.

1.1.2 Information available indicates that project's lead consultant and who was part of the bid evaluation team had previously worked with one of the bidders who eventually won the contract. However, the consultant did not declare the conflict of interest as required by Section 66 (6) of the Public Procurement and Assets Disposal Act, 2015. Impartiality of the evaluation process could not be confirmed.

In the circumstances, the propriety and legality of Kshs.182,523,994 in respect of property, plant and equipment and value for money for the year ended 30 June 2017 could not be confirmed.

1.2. Purchase of Land for Search and Rescue Centers

Included in property, plant and equipment balance of Kshs.396,495,684 is a figure of Kshs.242,726,737 in respect of land and building as at 30 June 2017. The figure of Kshs.242,726,737 as at 30 June 2017 includes additions of Kshs.35,180,040 which relates to purchase of three pieces of land for search and rescue centres as shown below:

Location	Acres	Amount
Kwale	3.13	19,500,000
Kisumu	0.8	14,280,040
Deposit for Kwale land		1,400,000
Total		35,180,040

Audit verification of the procurement documents revealed the following anomalies:

1.2.1 According to the head of procurement's professional opinion for Kwale land prepared on 10 June 2017, it was indicated that the head of procurement compared the prices quoted against the valuation report for each piece of land although the valuation reports were dated 21 July 2016. It implies the valuation report which was received after the head of procurement had issued his professional opinion did not provide guidance in determining the value of the

land. This was in violation of Section 84 (1) of the Public Procurement and Asset Disposal Act, 2015 which provides that the head of procurement shall, alongside the report to the evaluation committee, review the tender evaluation report and provide a signed professional opinion to the accounting officer on the procurement or asset disposal proceedings. Therefore, the head of procurement's professional opinion report was misleading.

- 1.2.2 According to a correspondence by the Ministry of Land and Physical Planning attached to draft valuation report, it referred to a letter reference KMA /PRO/41 dated 13 October 2015 by Kenya Maritime Authority requesting for valuation of the same pieces of land. It therefore implies that the selected plots had already been identified before the advertisement for expression of interest on 25 February 2016. In addition, the letter was not availed for audit verification despite several requests. It is an indication of predetermined supplier.
- 1.2.3 According to the advertisement for Kisumu land, the land was expected to measure 1 acre and within the vicinity of the port. However, the tender was awarded to a bidder whose land measured 0.8 acres and was 7.1 kilometers from Kisumu Port. This is contrary to the Section 80 (2) of the Public Procurement and Assets Disposal Act, 2015 which provides that the evaluation and comparison shall be done using the procedures and criteria set out in the tender documents.

In the circumstances, the propriety and legality of Kshs.35,180,040 in respect of property, plant and equipment and value for money for the year ended 30 June 2017 could not be confirmed.

2. Mortgage Guarantees

The statement of financial position reflects a balance of Kshs.156,655,845 in respect of mortgage guarantees. Information available indicates that the Authority has a staff car loan and mortgage schemes operated by Family Bank Ltd and Kenya Commercial Bank respectively. However, financial statements for the two schemes were not submitted to the Auditor-General for audit contrary to Section 81 (1 & 4) of the Public Finance Management Act, 2012 which requires that at the end of each financial year, the accounting officer for a national government entity shall prepare financial statements in respect of the entity and submit the same to the Auditor-General. In addition, according to paragraph 5 of Part 4 of the Salaries and Remuneration Commission's Circular SRC/ADM/CIR/1/13 Vol.III (128) dated 17 December 2014 on the management car loan and mortgage schemes for state officer requires each scheme to be subjected to annual audit of the government.

As a result, the accuracy, completeness and legality of mortgage guarantees balance of Kshs.156,655,845 as at 30 June 2017 could not be confirmed.

3. Merchant Shipping Levy

The statement of financial performance reflects a figure of Kshs.1,327,603,245 in respect of Merchant Superintendent Shipping Levy (MSS) for the year ended 30 June 2017. Records availed for audit indicates that Kenya Maritime Authority had outsourced the collection of merchant shipping levy to Kenya Revenue Authority. However, audit verifications revealed that the management had not put in place a system for determining merchant shipping levies collectable although Kenya Revenue Authority has been remitting copies of cargo manifests to Kenya Maritime Authority. It was observed that the management only relies on revenue reports remitted by Kenya Revenue Authority without any evidence of reconciliation between the expected revenue as per cargo manifest against remittances by Kenya Revenue Authority.

Consequently, the accuracy, validity and completeness of levies figure of Kshs.1,327,603,245 for the year ended 30 June 2017 could not be confirmed.

4. Investments

Note 16 to the financial statements reflects an amount of Kshs.1,050,901,393 in respect of various fixed deposits during the year ended 30 June 2017. However, there was no evidence of how the banks were identified and selected. In addition, there was no evidence that the National Treasury approved the investments in line with Section 1.7 of National Treasury Circular No.15/2016 Reference No. DGIPE /A / 1 /10 dated 19 August 2016 which states that “...no state corporation should invest surplus funds in any financial institutions / bank without prior approval of the National Treasury, other than where the investments is in Treasury Bills and Bonds”. Further, Section 20 (a) of the Kenya Maritime Authority Act, 2006 provides that surplus funds shall be invested in Government securities. Therefore, the management was in breach of the law.

In the circumstances, legality and value for money from the investments of Kshs.1,050,901,393 for the year ended 30 June 2017 could not be ascertained.

5. Board of Directors Cost

Note 11 to the financial statements reflects an amount of Kshs.57,389,175 in respect of board of directors cost for the year ended 30 June 2017. Audit examination of the board of directors’ records revealed the following anomalies:

5.1. Excessive Expenditure

Audit analysis of the Board of directors costs revealed that the board held forty seven (47) sittings including twenty two (22) full board sittings and twenty five (25) committee sittings during the financial year and as a result meeting costs rose by Kshs.9,144,524 or 19% of expenditure balance of Kshs.48,244,651 and thirty (30) sittings reported in the year 2015/2016. This is an indication of extravagant use of public resources

contrary to Article 232 (1- b) of the Constitution of Kenya, 2010 which provides that the values and principles of public service include efficient, effective and economic use of resources.

5.2. Irregular Sittings

A total of Kshs.9,877,181 was paid to board members for foreign meetings which were not in annual approved work plan contrary to Section 7 of Mwongozo Code of Governance for State Corporations, 2015 which requires the Chairperson of the Board to ensure that the Board develops and adheres to the annual work plan. In addition, the board members attended the following activities which were not in the annual work plan as detailed below:

Event	Amount Kshs.
Trainings	6,518,190.95
KECOSO Games	265,670.00
Agricultural Society of Kenya Shows	1,806,399.00
Others	5,856,598.00
Total	14,446,857.95

Audit verification of the other expenditure as indicated above, revealed the expenditure included; benchmarking trip to Thailand, attending CSR activities, courtesy call to County Governor, attending burial of Principal Secretary's relative, sensitization of boat owners among others which are administrative functions as outlined in Mwongozo Code of Governance for State Corporations, 2015, Section 1.2 (C) and 1.19 on the role and functions of the Board and role of the CEO respectively. Further, the sitting allowances were paid to board members without evidence of notices of the meeting, agenda for the meeting and respective board minutes for the above events as provided for by Section 7 of Mwongozo Code of Governance for State Corporations, 2015.

Consequently, the propriety of the board expenditure amounting to Kshs.24,324,039 for the year ended 30 June 2017 could not be ascertained.

6. Employee Costs

Note 10 to the financial statements reflects an amount of Kshs.460,353,351 in respect of employee costs for the year ended 30 June 2017. Audit verification of the employee cost records revealed the following anomalies:

6.1. Recruitment

Records availed for audit indicate that the Authority employed thirty one (31) additional staff during the year under review. Audit verification of the recruitment process for various positions revealed that the recruitment of nineteen new staff including; assistant accountant, accounts assistant, assistant public relations officer, assistant human resources officer, ICT assistant, procurement assistant, assistant internal audit officer

and ICT assistant, eleven drivers, six office assistants, and two data entry clerks was done without evidence of advertisement. This was contrary to Section B.4(1) of the Human Resource Policies and Procedures Manual for the Public Service which provides that Ministries/State Departments will advertise all vacant posts in a manner that reaches the widest pool of potential applicants. Further, there was no evidence that the management received approval from the National Treasury to recruit the new staff in line with National Treasury Circular No.20/2015 reference ES 1/03 'J' (79) dated 4 November 2015 freezing recruitment of new staff including in state corporation.

Further, recruitment for the position of; assistant accountant, accounts assistant, assistant public relations officer, assistant human resources officer, ICT assistant, procurement assistant, assistant internal audit officer and ICT assistant was not evidenced by application, short-listing, interview and appointment. It was, therefore, not evident that the vacancies were competitively filled on merit as the basis of appointments and promotions was not availed for audit review. As a result, the management was in breach of the law.

6.2. Staff Training

Included in the employee costs expenditure figure of Kshs.460,353,351 as reported in Note 10 to the financial statement for the year ended 30 June 2017, is staff training figure of Kshs.180,145,891. The expenditure increased by Kshs.52,100,269 being an increase of 41% compared to expenditure of Kshs.128,045,622 reported in the financial year 2015/2016. Audit verification revealed the following anomalies:

6.2.1 Lack of Training Needs Assessment

Records availed for audit verifications indicate that in June 2016, the management engaged a consultant to undertake a training needs assessment of the Authority whose draft report was submitted to management in August 2016. However, there was no evidence that the exercise was finalized. In addition, it was not clearly explained the basis of preparing the staff training plan for financial year 2016-2017 whose needs assessment had not been determined. This was contrary to Section 3 of Guidelines on Managing Training in the Public Service which states that "*planning for training shall be guided by the outcome of Training Needs Assessment and shall be designed in line with identified performance gaps linking training to closing of such gaps*" It was not clear how the training needs were identified. The Authority may not have obtained value for money on this expenditure.

6.2.2 Locally Available Training Held Abroad

Included in the training expenditure of Kshs.180,145,891 are various trainings undertaken abroad at a cost of Kshs.23,707,024. However, audit examination of the courses revealed that the courses were locally available as detailed below:

No.	Training	Trainers	Country	Local Trainers	Cost of Travel and
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					Accommodation
1.	Records Management Course	3/10/16 - 21/10/16	Tanzania	Kenya School of Government.	2,235,506
2.	Microsoft Server Training	10 /10/16 - 20/10/16	India	2KO Kenya, Netcom Learning	448,844
3.	Evaluation of Projects	19/9/2017 -7/10/16	Zambia	Kenya School of Government.	737,330
4.	Ethics reforms course	310/16 - 21/10/16	Tanzania	Kenya School of Government.	571,278
5.	Ethics & Governance course	310/16 - 21/10/16	Tanzania	Kenya School of Government.	571,278
6.	Certificate of competency courses		Singapore	Kenya School of Government.	6,221,764
7.	Advanced Project Management Training	1710/16 - 28/10/16	Tanzania	Kenya School of Government	1,268,713
8.	Risk Management & Quality Assurance Training	3/10/16 - 7/10/16	Malaysia	ICPAK, Governance Optimized	286,930
9.	Management Development Training Program	10/10/17 - 4/11/16	South Africa	Kenya School of Government	790,148
10.	ICT Computer Software Management	31/10/16 - 11/11/16	Dubai	2KO Kenya, Netcom Learning	785,068
11.	HIV/AIDS Workplace counselling	711/16 - 18/11/16	Tanzania	Kenya School of Government	376,947
12.	IFMIS Training	31/10/16 - 25/11/16	Tanzania	Kenya School of Government	4,598,635
13.	Executive Management Course	1410/16 - 25/11/16	Swaziland	Kenya School of Government	1,974,541
14.	E-Records Training	0710/16 - 25/11/16	Tanzania	Kenya School of Government	924,238
15.	Supply Chain Management	0710/16 - 25/11/16	Swaziland	Kenya School of Government	1,233,736
16.	Audit Risk Based Internal Audit.	1010/16 - 21/10/16	United Kingdom	ICPAK, Governance Optimized	682,068
	Total				23,707,024

It was not clear why the trainings could not be sourced locally. In addition, some of the trainings attended were offered by ESAMI which offer the same course locally. This is contrary to Section 4.2.1 of the Guidelines on Managing Training in the Public Service which provides that approval to train in foreign based institutions will be granted only in instances where the course applied for is not available in any local institution.

Further, the foreign travels were not supported with evidence of clearance from Permanent Secretary of the parent ministry contrary to Revised code of regulations 2006 and circular OP/CAB.9/9 by the Permanent Secretary, Secretary to the Cabinet and Head of Public Service which require officers traveling abroad to seek clearance from Permanent Secretary of the Parent Ministry.

In the circumstances, the propriety and regularity for expenditure of Kshs.180,145,891 for employee costs for the year ended 30 June 2017 to could not be ascertained.

7. Duty Travel Allowances

Included in general expenditure of Kshs.536,689,113 under note14 to the financial statements is duty travel allowances of Kshs.89,330,791 for the year ended 30 June 2017. Audit analysis revealed that the expenditure increased by Kshs.23,135,190 which is 35% compared to an expenditure of Kshs.66,195,601 reported in 2015/2016 financial year. In addition, records availed for audit verifications indicated that during the period under audit, foreign travel allowance to various staff was not supported by evidence of clearance from Permanent Secretary of the parent ministry. This was contrary to Revised code of regulations 2006 and circular OP/CAB.9/9 by the Permanent Secretary, Secretary to the Cabinet and Head of Public Service which require officers traveling abroad to seek clearance from Permanent Secretary of the Parent Ministry. Therefore, the management was in breach of the law.

Further, included in duty travel allowances of Kshs.89,330,791 is travel allowance and air tickets expenditure amounting to Kshs.9,899,000 for staff of the ministry on foreign travels. Although the management indicated that Ministry requested for the support due to constraints, it was not clearly explained how the Authority funded activities of another entity without a budget.

In the circumstances, the propriety and regularity of duty travel allowances expenditure amounting to Kshs.89,330,791 for the year ended 30 June 2017 could not be ascertained.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of Kenya Maritime Authority in accordance with ISSAI 30 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Key Audit Matters

Key Audit Matters are those matters that, in my professional judgement, are of most significance in the audit of the financial statements. Except for the matters described in the Basis for Qualified Opinion and Other Matter sections of my report, there are no Key Audit Matters to communicate in my report.

Other Matter

1.0. Budgetary Controls and Performance

According to the statement of comparison of budget and actual amounts, the Authority had a total budget of Kshs.1,998,000,000 compared to a budget of Kshs.1,085,976,000 for financial year 2015/2016 representing an increase of Kshs.912,024,000 or 84%.

Audit analysis of the budget performance revealed significant under-absorption on the following budget lines:

Item	Budgeted Allocation (Kshs)	Actual Kshs	Under Absorption Kshs	Under Absorption %
Staff Allowances	123,150,000	7,175,578	115,974,422	94
Water	5,000,000	799,203	4,200,797	84
Fuel	10,000,000	2,161,687	7,838,313	78
Club Fees	1,500,000	0	1,500,000	100
Research & Development	158,000,000	12,456,690	145,543,310	92
Total	297,650,000	22,593,158	275,056,842	

In overall, the Authority under spent to a tune of Kshs.546,954,555 or 33% of the total budget allocation as detailed in the statement of comparison of budget and actual amounts. The funds could have been allocated to other deserving areas that would improve delivery of goods and services to the public. This may also be an indication of improper planning and the management may need to re-think on its budget making process with a view to focusing on more priority areas.

2.0. Lack of Substantive Director-General

For the last two years, the Authority had been led by an acting Director-General. Information available indicates that the recruitment process was cancelled due to a court case. The acting Director-General may not provide effective administrative structures and leadership to the Authority's management due to the nature of the appointment. There is need for the Board to pursue the court case to its settlement in order to allow recruitment of Director-General to be concluded without further delay.

Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (Accrual Basis) and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Authority's ability to continue to sustain services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless the management either intends to liquidate the Authority or to cease operations, or have no realistic alternative but to do so.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

Those charged with governance are responsible for overseeing the Authority's financial reporting process.

Auditor-General's Responsibilities for the Audit of the Financial Statements

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, and for the purpose of giving an assurance on the effectiveness of the Authority's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the management.
- Conclude on the appropriateness of the management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Authority's ability to continue to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the Authority to cease to continue to sustain its services.

- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the Authority to express an opinion on the financial statements.
- Perform such other procedures as I consider necessary in the circumstances.

I communicate with the management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that are identified during the audit.

I also provide management with a statement that I have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence, and where applicable, related safeguards.



FCPA Edward R. O. Ouko, CBS
AUDITOR-GENERAL

Nairobi

12 March 2018