

# **REPORT OF THE AUDITOR-GENERAL ON KENYA PORTS AUTHORITY FOR THE YEAR ENDED 30 JUNE, 2019**

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## **REPORT ON THE FINANCIAL STATEMENTS**

### **Qualified Opinion**

I have audited the accompanying financial statements of Kenya Ports Authority set out on pages 64 to 138, which comprise the statement of financial position as at 30 June, 2019, and the statement of profit and loss and other comprehensive income, statement of changes in equity, 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 Ports Authority as at 30 June, 2019, and of its financial performance and its cash flows for the year then ended, in accordance with International Financial Reporting Standards (IFRS) and comply with the Kenya Ports Authority Act, CAP 391 and the Public Finance Management Act, 2012.

### **Basis for Qualified Opinion**

#### **1.0 Operating Revenue**

As disclosed in Note 6 to the financial statements, the statement of profit and loss and other comprehensive income for the year ended 30 June, 2019 reflects operating revenue of Kshs.52,758,959,000. The following observations were made:

#### **1.1 Undercharging of Revenue from Storage of Empty Containers**

Included in the operating revenue of Kshs.52,758,959,000 is an amount of Kshs.697,600,000 in respect of storage of empty containers. Records availed for audit review indicated that the Authority billed a total of USD83,655 (Kshs.8,532,810) for storage of five thousand six hundred and sixty (5660) empty containers. However, the calculated total revenue collectable or billable after expiry of the free storage period amounted to USD1,231,860 (Kshs.125,649,720), thus undercharging the storage revenue on the empty containers by USD1,148,205 (Kshs.117,116,910).

Further, the records indicated that the Authority released fifty-four (54) empty containers with storage charges of Kshs.36,950,383 before billing and securing of the revenue during the financial year 2017/2018. Instead, storage was billed and captured in 2018/2019 financial year, thus overstating the revenue for the year under audit review by Kshs.36,950,383.

Under the circumstances, the accuracy and completeness of revenue from storage of empty containers of Kshs.697,600,000 for the year ended 30 June, 2019 could not be confirmed.

#### **1.2 Un-Confirmed Licenses Revenue**

The operating revenue of Kshs.52,758,959,000 also includes an amount of Kshs.128,677,000 in respect of licenses revenue, out of which Kshs.92,566,974 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 the Kenya Ports Authority (KPA) and African Gas and Oil Company Limited indicated that the Company was to pay license fee in US Dollars equal to twenty-five percent (25%) of the Company's revenue derived directly from each tonne of LPG discharged, payable on a quarterly basis. However, records availed for audit review indicated that KPA charged license fees of US Dollars 22.65 instead of US Dollars 22.64, a difference of US Dollars 0.01 without providing documentary evidence to confirm that this was the service fee charged by the Company. Further, the Management did not provide details of all the LPG quantities handled at the facility by the Company during the year under review.

Consequently, the accuracy, completeness and regularity of the license fee of Kshs.92,566,974 for the year ended 30 June, 2019 could not be confirmed.

## **2.0 Basic Salary Paid for Hours not Worked**

Included in the establishment expenses of Kshs.19,992,244,000 is an amount of Kshs.7,207,572,000 in respect of basic salary. Audit review of time management records revealed that basic salary was paid based on the hours worked as captured in the time management system. However, the Management approved a payment of Kshs.223,346,182 for 390,379 hours not worked as staff left work before time and Kshs.3,334,689 for 5,672 hours also not worked when staff came to work late. This resulted in an over-payment of salaries amounting to Kshs.226,680,871 for hours not worked.

Under the circumstances, the accuracy of the basic salaries expenditure of Kshs.7,207,572,000 for the year ended 30 June, 2019 could not be confirmed.

## **3.0 Administrative Expenses**

As disclosed in Note 8 to the financial statements, the statement of profit and loss and other comprehensive income reflects an expenditure of Kshs.4,044,431,000 under administrative expenses. The following observations were made;

### **3.1 Wrong Charge to Development Studies Expenditure**

The administrative expenses of Kshs.4,044,431,000 includes an amount of Kshs.291,033,000 in respect of development studies. The latter balance includes an amount of Kshs.33,880,500 paid to two different vendors for the transfer of containers within KPA premises and charged to development studies. However, the related budget and procurement plans were not availed for audit review. Although the Management indicated that this was done on behalf of the Kenya Railways Corporation (KRC), evidence of a request from KRC Management or of non-availability of the Authority's equipment to undertake the operation was not availed for audit review.

Further, no explanation was provided on why KRC did not engage the service providers directly and why the expenditure was charged to development studies. In addition, details of the number of containers moved, dates it was done and equipment transporting the containers were not availed for audit review to confirm the amount charged and paid. The Management did not also provide details of how the service providers were identified and how the rates charged for the transfer of containers were determined.

Consequently, the accuracy, propriety and validity of Kshs.33,880,500 spent on development studies for the year ended 30 June, 2019 could not be confirmed.

### **3.2 Insurance Premiums**

Included in the administrative expenses of Kshs.4,044,431,000 is an amount of Kshs.427,873,000 in respect of insurance premiums. The following observations were made;

#### **3.2.1 Unconfirmed Plant All Risk Policy Insurance**

Included in insurance premiums of Kshs.427,873,000 for the year ended 30 June, 2019 is an amount of Kshs.64,139,998 in respect of premiums for policy number WES/ECPM/POL/4001814 - plant all risk policy. However, records availed for audit review indicated that insurance on various assets was not based on insurance valuation or asset book values. Further, two hundred and thirty-five (235) assets included in the list of insured assets did not have asset numbers, hence it was not possible to confirm if all the Authority's assets were insured or those covered by the policy belonged to the Authority.

Consequently, the propriety of insurance premiums of Kshs.64,139,998 on plant all risk policy for the year ended 30 June, 2019 could not be confirmed.

#### **3.2.2 Variation of Staff Group Cover Insurance**

Included in insurance premiums of Kshs.427,873,000 for the year ended 30 June, 2019 is an amount of Kshs.58,608,008 annual premium for provision of Staff Group Assurance Scheme cover. However, the service provider requested for variation of the premium by Kshs.14,652,002 or 25%, citing increase in the number of projected claims. This was approved by the Management without justification.

Consequently, the propriety and validity of insurance premiums of Kshs.58,608,008 on staff group cover for the year ended 30 June, 2019 could not be confirmed.

#### **3.2.3 Unsettled Claims**

Further included in insurance premiums of Kshs.427,873,000 for the year ended 30 June, 2019 is an amount of Kshs.11,826,722 in respect of premiums paid to a company for motor vehicle insurance. However, records availed for audit review indicated that the company failed to settle claims promptly, resulting to termination of the contract. The Management did not provide evidence to confirm refund of insurance premium paid for the outstanding period nor evidence of full settlement of claims lodged.

Consequently, the propriety, validity and value for money of insurance premiums of Kshs.11,826,722 for the year ended 30 June, 2019 could not be confirmed.

#### **3.2.4 Insurance for Kenya Ports Authority Pension Scheme Assets**

The insurance premiums of Kshs.427,873,000 also includes an amount of Kshs.9,020,051 in respect of premiums for provision of insurance services to cover assets valued at Kshs.11,723,412,000 belonging to the Kenya Ports Authority Pension Scheme which is an independent entity with its own budget and the Authority did not have an insurable interest.

Consequently, the propriety and validity of insurance premiums of Kshs.9,020,051 for the year ending 30 June, 2019 could not be confirmed

### **3.3 Licenses and Computers Cost not Capitalised**

Included in the administrative expenses of Kshs.4,044,431,000 is an amount of Kshs.666,278,000 in respect of licenses and computers, out of which Kshs.10,000,000 was a part payment for procurement of IDEA data analytics and monitoring software valued at Kshs.15,812,830. However, the cost of the software was expensed instead of being capitalized as an intangible asset as required by International Accounting Standard No. 4 which states that- when the software is not an integral part of the related hardware, computer software is treated as an intangible asset. Further, records availed for audit review indicated that part of the software cost amounting to Kshs.3,162,566 was charged to development studies budget.

In addition, the Authority procured the software through direct procurement method and no evidence was availed to confirm that the software required compatibility with previously acquired technology or services to warrant direct procurement.

Consequently, the legality and value for money spent on software amounting to Kshs.15,812,830 and the accuracy of licenses and computers expenditure of Kshs.666,278,000 for the year ended 30 June, 2019 could not be confirmed.

### **3.4 Unsupported Sports Expenditure**

The administrative expenses of Kshs.4,044,431,000 also includes an amount of Kshs.96,015,000 under sports which relates to salaries, subsistence allowances, transport and other activities during various tournaments both locally and overseas by eleven (11) different teams of the Authority. However, the Management did not provide details of how the team management units' employees and non-employee players were selected to participate in various tournaments and the subsistence allowances paid determined. Further, an approved policy on the terms of engagement with team management units, employees and non-employee players was not availed for audit review.

In addition, included in the sports expenditure is Kshs.17,588,162 paid to staff to attend football matches of Bandari Football Club. However, it was not clear how and why the Authority issued imprests to staff in the football cheering team given that the club is an independent entity and has its own budget.

Consequently, the propriety of sports expenditure of Kshs.96,015,000 for the year ended 30 June, 2019 could not be confirmed.

## **4.0 Operating Expenses**

As disclosed in Note 10 to the financial statements, the statement of profit and loss and other comprehensive income for the year ended 30 June, 2019 reflects an expenditure of Kshs.5,976,959,000 under operating expenses. The following observations were made;

### **4.1 Overcharge on Uniforms and Clothing Expenses**

Included in the operating expenses of Kshs.5,976,959,000 is an amount of Kshs.354,579,000 in respect of uniforms and clothing, out of which Kshs.86,029,240 was in respect of uniforms and staff protective equipment. Included in the latter balance of Kshs.86,029,240 is an amount of Kshs.49,871,496 for supply of high

visibility overalls. Records availed for audit review indicated that the Authority procured seven thousand two hundred and sixty (7,260) high visibility overalls costing Kshs.47,008,500 at a unit cost of Kshs.6,475. The award letter indicated a unit cost of Canada-imported overalls of Kshs.6,475 while locally made overalls were priced at Kshs.2,325 or a total of Kshs.16,879,500 for 7,260 overalls. However, physical verification of the items revealed that the overalls received had a local manufacturer's label. Further, importation documents (Import Declaration Forms) to confirm that the high visibility overalls were from Canada were not availed for audit review. The Authority therefore, overpaid the supplier by Kshs.30,129,000 for the locally made overalls.

Consequently, the propriety and value for money amounting to Kshs.49,871,496 spent on high visibility overalls for the year ended 30 June, 2019 could not be confirmed.

## **4.2 Unconfirmed Port Infrastructure Repairs**

The operating expenses of Kshs.5,976,959,000 includes an amount of Kshs.1,528,600,000 relating to port infrastructure repairs. The latter balance includes an amount of Kshs.208,046,902 in respect of waterproofing works contract at KPA Headquarters Blocks I and II awarded through biennial framework contract for waterproofing works. However, details of how the contractor was selected from the list of contractors awarded the biennial contract were not availed for audit verification.

Further, the Bills of Quantities for the works included removal of old screed paving and water proofing material, replacement of the same with 38mm tropicalized roof finish, application of bituminous aluminum, application of Dunlop flexible membrane, laying of synthetic reinforced net backing and application of penetron admix for the whole roof surface. However, during a physical verification in the month of October, 2019, it was noted that a large section of the roof appeared unrepaired as evidenced by leakages observed whenever it rained.

Under the circumstances, the propriety, occurrence and value for money of Kshs.208,046,902 on repairs of port infrastructure for the year ended 30 June, 2019 could not be confirmed.

## **5.0 Receivables and Prepayments**

### **5.1 Debt Recoverability**

The statement of financial position as at 30 June, 2019 reflects a receivables and prepayments balance of Kshs.15,946,216,000 representing an increase of Kshs.1,445,859,000 or 10% from the balance of Kshs.14,500,357,000 reported in 2017/2018, an indication of ineffective debt collection strategies by the Authority.

### **5.2 Long Outstanding Debt – National Treasury**

As reported in the previous financial year, the receivables and prepayments balance of Kshs.15,946,216,000 as at 30 June, 2019, includes Kshs.287,231,000 owed by the Ministry of Transport (Treasury/Dredgco Limited) that has been long outstanding since 1994. Although the Management has fully impaired this amount owed by the National Government it is not clear why The National Treasury has failed to pay the debt.

### **5.3 Doubtful Debts**

The receivables and prepayments balance of Kshs.15,946,216,000 includes an amount of Kshs.4,877,632,000 in respect of trade receivables comprising trade cargo, trade marine and rental receivables of Kshs.4,343,245,000, Kshs.450,793,000, and Kshs.83,594,000 respectively. An audit review of the ageing analysis revealed that an amount of Kshs.964,271,233 has been outstanding for more than one (1) year while the Authority continued to engage in business with the debtors. No explanation has been provided for the failure to collect the amount.

## **6.0 Property, Plant and Equipment**

As disclosed in Note 11 to the financial statements, the statement of financial position reflects a balance of Kshs.241,554,138,000 under property, plant and equipment. The following observations were made:

### **6.1 Alienated Properties**

As reported in the previous year, the property, plant and equipment balance included leased land valued at Kshs.15,190,900,000 and land and buildings balance of Kshs.75,097,862,000. Information availed for audit review indicated that twenty-nine (29) properties belonging to the Authority had been invaded by third parties. The Management indicated that third parties had acquired ownership rights over the properties and undertaken development. However, the Authority had filed suits in various law courts which were pending determination. Further, out of these twenty-nine (29) properties, only nine (9) properties had values totalling to Kshs.755,100,000 while twenty (20) properties of unknown value were not included in the fixed assets register.

In the circumstances, it has not been possible to ascertain the ownership status of the twenty-nine (29) parcels of land and that the property, plant and equipment balance of Kshs.241,554,138,000 is fairly stated as at 30 June, 2019.

### **6.2 Land Without Title Documents**

Included under the land and buildings balance of Kshs.75,097,862,000 are nineteen (19) parcels of land valued at Kshs.3,106,600,000 owned by the Authority which did not have title documents. Although the Management engaged a private consultant in the month of May 2017 to conduct verification of all its properties, the final report of the consultant was not availed for audit review.

### **6.3 Idle Parcels of Land**

As reported in the previous years, the property, plant and equipment balance of Kshs.241,554,138,000 as at 30 June, 2019 includes fourteen (14) pieces of land measuring about 263.47 hectares and valued at Kshs.4,369,700,000 which is not utilized. Although the Management has indicated the proposed action plan for each parcel of land, the actions have not been executed and the status remains as reported in the previous year.

### **6.4 Reclaimed Land**

#### **6.4.1 Excision of Part of Harbour Area**

As reported in the previous financial year, Kenya Ports Authority tariff book (2012) pronounces all the tidal waters encircling the Mombasa Island as Harbour Area. However, a firm of private developers has reclaimed part of the waters encircling the island adjacent to the Kenya Ports Authority offices. The National Land Commission on 17 December, 2015 instructed immediate cessation of any development on the subject land and its environs until determination of the matter. However, the developer, has proceeded to develop the land against the instruction issued by the National Land Commission.

#### **6.4.2 Approval of Access Road**

As similarly reported in the previous financial year, the Authority's Board approved the construction of a road linking the reclaimed parcels of land by the same developer to the Port through a defined route on parcel MSA/BLOCK 1/691 which was reclaimed through dumping material from the Port. The road is restricted for use by the developer only who has installed a weighbridge and an office. The Authority indicated that the title for the reclaimed land was acquired by the developer on behalf of the Authority at the developer's cost. The Management has not explained how the developer applied for and acquired title for the irregularly reclaimed land on behalf of the Authority and who authorized the Management to initiate the transaction.

In light of the foregoing, it has not been possible to ascertain the accuracy, completeness and ownership status of the property, plant and equipment balance of Kshs.241,554,138,000 and that the balance is fairly stated as at 30 June, 2019.

#### **6.5 Lamu Port Housing**

The property, plant and equipment balance of Kshs.241,554,138,000 includes an amount of Kshs.49,201,730,000 under work in progress, out of which Kshs.503,124,577 is in respect of Lamu Port Police Station and Staff Housing. The following observations were made:

##### **6.5.1 Unconfirmed Project Cost**

Records availed for audit review indicated that the Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development advertised and awarded contract No. 9712C - Proposed Lamu Port Police Station and Management Housing for Kshs.615,848,997 in the financial year 2012/2013. The Kenya Ports Authority entered into an agreement on 23 November, 2017 to take over the works and avail funding of Kshs.842,683,022 through the government grant for Lamu Port after a Board approval on 10 November, 2017. The total funding comprised Kshs.340,532,154, being claims by the contractor for delay in handing over of the site and other factors provided for in the contract and Kshs.502,150,868 for outstanding and additional works.

An audit review of the agreement revealed that the project was 45% complete as at the time the Kenya Ports Authority undertook to finance the same and indicated that the total amount required for completion was Kshs.961,003,022 as detailed below.

<b>Details</b>	<b>Amount (Kshs.)</b>
Project Contract Sum	615,848,997
Claim for delay and compensation	340,532,154
<b>Total</b>	<b>956,381,151</b>

Amount paid to contractor by the Ministry up to (Dec 2017)	(267,196,753)
<b>Amount required to complete the houses</b>	<b>689,184,398</b>
Cost of Presidential launch	153,498,624
<b>Total Amount due to Contractor</b>	<b>842,683,022</b>
<b>Additional facilities</b>	<b>118,320,000</b>
<b>Total Required</b>	<b>961,003,022</b>

However, Project data provided in the same agreement indicated that the total amount certified and paid to the contractor as at 23 November, 2017 was Kshs.346,222,507 which varied by Kshs.79,025,754 with the amount of Kshs.267,196,753 used in calculating the amount required to complete the project. The variance has neither been explained nor justified. Further, the amount of Kshs.346,222,507 was not recognized as a capital grant in the Authority's financial statements.

Under the circumstances, the project cost of Kshs.961,003,022 for Proposed Lamu Port Police Station and Management Housing and cost of Kshs.267,196,753 incurred by the Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development on the same project could not be confirmed.

### 6.5.2 Irregular Variation of the Contract Price

The State Department for Public Works issued a variation order number 1 of Kshs.494,030,778 to Kshs.1,109,879,775 for the works, representing 80% of the original contract sum of Kshs.615,848,997. However, the variation was contrary to Section 139(4)e of the Public Procurement and Asset Disposal Act, 2015 which states that any variation of a contract shall only be considered if the cumulative value of all contract variations do not result in an increment of the total contract price by more than twenty-five percent (25%) of the original contract price.

Consequently, the contact variation of Kshs.494,030,778 was contrary to the Law.

### 6.5.3 Unverified Works

The variation order number 1 of Kshs.494,030,778 included an amount of Kshs.153,498,624 for emergency works in respect of the Presidential launch of the Lamu Port comprising the following:

	<b>Details</b>	<b>Amount (Kshs.)</b>
1	Bush Clearing and parking	45,627,560
2	Access roads	15,930,000
3	Temporary police camp	1,330,590
4	Plaque stands	2,695,000
5	Ramp to landscaped area	43,250
6	Works at the navy base	51,000,000
7	Works at the helipad area	15,700,000
	<b>Total</b>	<b>132,326,400</b>
	<b>VAT</b>	<b>21,172,224</b>
	<b>Overall Total</b>	<b>153,498,624</b>

However, during site visit in the month of September 2019, no permanent works that qualify as assets of the Authority were verified. Further, it is not clear why works costing Kshs.51,000,000 at the Navy Base were financed and disclosed as part of the Authority's assets.



Consequently, the existence of work in progress of Kshs.153,498,624 as at 30 June, 2019 could not be confirmed

#### **6.5.4 Unverified Project Motor Vehicle and Maintenance Costs**

A project vehicle acquired at a cost of Kshs.5,800,000 was grounded and was held at a police station off the site for safety reasons. However, the contractor continued to claim vehicle maintenance and driver's cost totalling Kshs.1,377,764 (Kshs.44,444 per month for 31 months extended period) for a vehicle which was not in use.

Consequently, the existence of project assets of Kshs.5,800,000 and vehicle maintenance cost of Kshs.1,377,764 as at 30 June, 2019 could not be confirmed.

#### **6.6 Construction of Three Berths at Manda Bay - Lamu Port**

The property, plant and equipment balance of Kshs.241,554,138,000 includes an amount of Kshs.49,201,730,000 under works in progress, out of which Kshs.41,198,142,000 is in respect of basic construction work. The latter balance includes an amount of Kshs.27,731,781,192 for the construction of first three berths and associated infrastructure at Manda Bay – Lamu Port. The contract for the works was signed on 12 July, 2013 for USD 259,441,740 (equivalent to Kshs.26,463,057,480) and the Kenyan Shilling component of Kshs.18,992,419,922.

The following anomalies were noted:

##### **6.6.1 Overpayment of Advance**

The contract provided for 10% advance payment which translated to USD 25,944,174 (foreign currency portion) and Kshs.1,899,241,992 (local currency portion). However, the Management approved and paid an advance of Kshs.2,000,000,000 for the local component which is Kshs.100,758,008 in excess of Kshs.1,899,241,992(10%) provided by the contract. No explanation was provided for the excess payment of advance.

Further, interim payment certificate No. 17 dated 12 June, 2019 indicated that the foreign currency portion of the advance has been fully recovered while outstanding local currency advance was Kshs.569,958,754. However, Note 22(b) to the financial statements for the year ended 30 June, 2019 reflects advance Lamu creditors of Kshs.1,523,067,000, resulting to a variance of Kshs.953,108,246 which was not explained or reconciled. In addition, the Management availed a bank guarantee from a local bank for Kshs.1,352,950,669, an indication that advance payment of Kshs.170,116,331 may not have been secured by a bank guarantee.

Consequently, the accuracy of advance Lamu creditors balance of Kshs.1,523,067,000, recoverability of Kshs.170,116,331 and validity of Kshs.100,758,008 advance payment as at 30 June, 2019 could not be confirmed.

##### **6.6.2 Unapproved Temporary Works**

Included in Kshs.27,731,781,192 for the construction of Lamu Port are temporary works item 1.2 of the Bills of Quantities valued at USD.4,465,062 and Kshs.792,032,072 which were supported with a breakdown of items and amounts.

However, evidence that the proposed breakdown of the temporary works of USD.4,465,062 and Kshs.792,032,072 was submitted to the Engineer and taken into account was not availed for audit verification. Further, the Management did not provide evidence of measurement of the temporary works lump sum of USD.4,465,062 or Kshs.792,032,072.

Under the circumstances, the existence of temporary works and validity of lump sum payment of Kshs.792,032,072 as at 30 June, 2019 could not be confirmed.

### **6.6.3 Unconfirmed Insurance and Security**

The Bill of Quantities for Lamu Port project provided for USD.6,733,012 (Kshs.688,585,137) and Kshs.114,073,998 for insurance and security of the project which was fully paid for as at 30 June, 2019. Review of the insurance policy documents revealed that the insurance period was 1,734 days from 17 April, 2015 to 14 January, 2020. However, this is contrary to Clause 18.5 of the General Conditions of Contract Amendment which required the contractor to maintain a professional indemnity insurance in full force and effect until five (5) years after the takeover certificate. Further, evidence of premium payments by the contractor was not provided for audit review

Under the circumstances, the accuracy and value for money of Kshs.USD.6,733,012 (Kshs.688,585,137) and Kshs.114,073,998 insurance costs and insurance cover for Lamu Port work in progress of Kshs.27,731,781,192 as at 30 June, 2019 could not be confirmed.

### **6.6.4 Unsupported Engineers' Expenses**

The Bills of Quantities included item number 1.9.1 for establishment of Engineers' office and supply of office equipment and office furniture at initial cost of USD.114,129 and Kshs.39,975,089 which had been paid in full as at 30 June, 2019. However, the Management did not provide details of what the amount was spent on. A physical verification of the project site in the month of September 2019 revealed that the Engineers were housed at Lamu Port Headquarters that was built by the State Department for Public Works.

Consequently, the accuracy and propriety of works in progress of USD.114,129 (Kshs.11,671,973) and Kshs.39,975,089 could not be confirmed.

### **6.6.5 Unsupported Accommodation Expenses**

The Bills of Quantities included item number 1.9.5 for Engineers' accommodation at a total cost Kshs.26,617,290, out of which Kshs.16,846,689 had been spent as per interim certificate number 17 dated 12 June, 2019. However, details of the expenditure were not provided for audit review.

Consequently, the propriety of accommodation allowances totalling Kshs.16,846,689 included in work in progress for the year ended 30 June, 2019 could not be confirmed.

### **6.6.6 Omitted Lamu Port Land**

The property, plant and equipment balance of Kshs.241,554,138,000 includes an amount of Kshs.49,201,730,000 under works in progress, out of which an amount of Kshs.27,731,781,192 is in respect of Lamu Port Project funded by National Government Grants. However, and as previously reported, the Lamu Port land costing Kshs.1,925,347,735 was not included in the property, plant and equipment balance of Kshs.241,554,138,000 as at 30 June, 2019. Further, a physical verification in the month of October 2019 revealed that the Project Affected Persons, were still occupying the land despite receipt of full compensation amounting to Kshs.1,925,347,735. In addition, the Authority was yet to obtain a title deed for the land.

Consequently, the accuracy and completeness of the property, plant and equipment balance of Kshs.241,554,138,000 and the ownership of the land could not be confirmed.

## **6.7 Manufacture of Concrete Barriers**

Included in work in progress balance of Kshs.49,201,730,000 as at 30 June, 2019 is basic constructions amount of Kshs.41,198,142,000, out of which Kshs.233,938,333 is in respect of manufacture of concrete barriers. The following observations were made:

- i. Kenya Ports Authority issued Local Purchase Orders to 11 firms for manufacture of 15,180 concrete barriers costing Kshs.1,202,192,252.95 inclusive of Value Added Tax for road barricading and traffic flow management within the Port. However, the works were awarded under the biennial tender for concrete works KPA/083/2015-2016/CE which was meant for repairs and maintenance works of concrete infrastructure at the Port and not for procurement of capital projects. Further, two Local Purchase Orders (LPOs) for 2,760 barriers for Kshs.218,587,008 had not been delivered as at 30 June, 2019 while the remaining nine (9) LPOs for 12,420 barriers costing Kshs.983,605,244.95 (Kshs.79,195.27 per barrier VAT inclusive) had been partially delivered or serviced.
- ii. Audit review of the Bills of Quantities revealed that one thousand three hundred and eighty (1380) barriers required 5778 cubic meters of concrete to manufacture, translating to 4.2 cubic meters per barrier. However, during physical verification in the month of October 2019, measurements taken indicated that each barrier was approximately 0.65 cubic meters in volume which was less than the volume provided in the Bills of Quantities. This is an indication that the total cost of concrete barriers to be delivered as per calculated volume and prices in the Bills of Quantities should have been Kshs.151,323,884, (Kshs.12,184 per barrier) and not Kshs.983,605,244. Therefore, the cost may have been inflated by approximately Kshs.832,281,360.71 (Kshs.67,011 per barrier).
- iii. In addition, the Management did not avail approved budget and procurement plan to support the manufacture of concrete barriers, contrary to Section 53 (9) of the Public Procurement and Asset Disposal Act, 2015 which states that an Accounting Officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for, commits an offence under the Act.
- iv. Furthermore, the Management did not avail user procurement requisitions indicating the need and locations of these barriers, contrary to Section 53 (9) of the Public Procurement and Asset Disposal Act, 2015 (3) which states that any public

officer who knowingly recommends to the Accounting Officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under the Act.

Under the circumstances, the propriety of Kshs.233,938,333 in respect of manufacture of concrete barriers could not be confirmed.

#### **6.7.1 Excavation and Concrete Works on Kenya Railways Corporation (KRC) Makongeni Goodshed - LR No. 209/8197**

Included in work in progress balance of Kshs.49,201,730,000 as at 30 June, 2019 is basic construction amount of Kshs.41,198,142,000, out of which Kshs.746,548,065 is in respect of concrete works at Makongeni Inland Container Depot in Nairobi. However, the work in progress support schedule indicated a total value of orders issued of Kshs.587,475,320, resulting to a variance of Kshs.159,072,745 which was not explained or reconciled. Further, the expenditure was not provided in the approved capital budget for the Authority for the year under audit.

Further, the Authority issued Local Purchase Orders to various companies amounting to Kshs.587,475,320 under biennial contracts for excavation and concrete works Ref: KPA/083/2015-2016/CE. However, the biennial contracts were for repair works and not for capital works at Makongeni Yard LR No.209/8197. During physical verification in the month of September 2019, it was noted that the yard was not demarcated to identify areas to be excavated and concreted by the various contractors. It was therefore not possible to ascertain if each of the contractors delivered the works as per the purchase orders and Bills of Quantities. In addition, the Authority was in occupation of the property without a lease and had un-procedurally and without approval of KRC, uprooted a railway line while undertaking excavations, an indication of irregular investment of public funds on a third party's property.

Consequently, the accuracy and propriety of work in progress of Kshs.746,548,065 as at 30 June, 2019 could not be confirmed.

#### **7.0 Bank and Cash Balance Variance**

As disclosed in Note 24 to the financial statements, the statement of financial position reflects a bank and cash balance of Kshs.859,114,000 as at 30 June, 2019. Included in the bank and cash balance of Kshs.859,114,000 is petty cash balance of Kshs.3,708,000, out of which Kshs.830,414 is in respect of Rwanda office imprest. However, the cash count certificate as at 30 June, 2019 indicated a balance of Kshs.37 (Rwandese Franks 369), resulting to a variance of Kshs.830,377 which has not been explained or reconciled.

Consequently, the accuracy and completeness of bank and cash balance Kshs,859,114,000 as at 30 June, 2019 could not be confirmed.

#### **8.0 Long Term Investments**

As previously reported, the statement of financial position as at 30 June, 2019 reflects long term investments balance of Kshs.1,748,887,000 comprising fixed deposits of Kshs.1,719,787,000 and equities of Kshs.29,100,000. However, Note 20(b) to the financial statements for the year ended 30 June, 2019 reflects equities with a nominal value of Kshs.54,346,000 and shares with a nominal value of Kshs.100,000,000 in respect of the Kenya National Shipping Line Limited and the Kenya Ferry Services

Limited respectively which were fully impaired. However, share certificates for the Kenya National Shipping Line Limited availed for audit review indicated that the Kenya Ports Authority owned 70,023 shares with a nominal value of Kshs.70,023,000, resulting to a variance of Kshs.15,677,000. The variance has not been explained or reconciled.

Consequently, the accuracy of equities balance of Kshs.29,100,000 as at 30 June, 2019 could not be confirmed.

## **9.0 Unconfirmed Borrowings Obligation**

As disclosed in Note 29 to the financial statements, the statement of financial position as at 30 June, 2019 reflects borrowings of Kshs.33,549,967,000, out of which Kshs.23,373,808,000 is an outstanding loan from Japan International Cooperation Agency for construction of Container Terminal 2 at the Port of Mombasa. Available information indicates that the Cabinet approved the revival of the Kenya National Shipping Line Limited (KNSL) and the Government was to ensure that KPA and KNSL negotiated an arrangement through which KNSL would operate from the Port of Mombasa, reserve all government cargo for carriage by KNSL and streamline operations at the Port to make it more efficient and effective.

Further, the KPA Board was also to appoint KNSL as the sole provider in respect of control, operations, maintenance and management of the terminal (Second Container Terminal). However, the Management did not indicate whose obligation it was to settle the outstanding loan balance upon completion of the envisioned transfer and handing over of the Second Container Terminal.

Consequently, the repayment and obligations of borrowings balance of Kshs.23,373,808,000 as at 30 June, 2019 and revenue rights associated with Container Terminal 2 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the Kenya Ports Authority Management in accordance with ISSAI 130 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 our professional judgment, are of most significance in the audit of the financial statements. There were no key audit matters to report in the year under review.

## **Other Matter**

### **1. Budgetary Control and Performance**

During the year under review, the Authority had a total revenue budget of Kshs.46,158,386,000 against actual revenue collections of Kshs.55,444,977,000 or 120%, resulting to over collection of Kshs.9,286,591,000 or 20%. Similarly, the Authority had a total budget of Kshs.38,766,468,000 while expenditure totalled

Kshs.41,559,472,000, resulting to a net over-expenditure of Kshs.2,793,004,000 or 7.2%. The Management attributed the significant over collection to increased storage and remarshaling operations at the Inland Container Depot in Nairobi (ICDN). The over expenditure which was mainly on depreciation and amortization was attributed to revaluation and acquisition of new assets.

There is need therefore for the Authority to increase its revenue targets and budget in light of improved collections at the ICDN and allocate more resources to projects that will enhance its operational efficiency and service delivery to port users.

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

Various prior year audit issues remained unresolved as at 30 June, 2019. Management has not provided reasons for the delay in resolving the prior year audit issues.

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

### **Conclusion**

As required by Article 229(6) of the Constitution, based on the audit procedures performed, except for the matters described in the Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources section of my report, I confirm that, nothing else has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

### **1. Staff Establishment**

As disclosed in Note 9 to the financial statements, the statement of profit and loss and comprehensive income reflects an expenditure of Kshs.19,992,244,000 under establishment expenses which includes an amount of Kshs.2,210,961,000 in respect of staff allowances. The following observations were made:

#### **1.1 Irregular Payment of Acting Allowances**

Human resource records indicated that seventeen (17) employees had been serving in acting positions for more than six (6) months. This is contrary to Paragraph B11(f) of Kenya Ports Authority Human Resources Manual, 2017, which states that acting appointments shall be limited to six months at any given time. As a result, a total of Kshs.1,955,126 was paid to staff as monthly acting allowances beyond the six months period during the year under review.

Consequently, the validity of acting allowances of Kshs.1,955,126 for the year ended 30 June, 2019 could not be confirmed.

#### **1.2 Irregular Payment of Special Duty Allowances**

An audit review of the payroll revealed that fourteen (14) employees undertook special duties for more than six (6) months. This is contrary to Paragraph B.12 (h) of the Kenya Ports Authority Human Resource Manual, 2017 which states that Special Duty Allowance will not be payable to an officer for more than six (6) months. As a result, special duty allowances of Kshs.714,767 was paid contrary to the Policy.

#### **1.3 Payment of Bonus Contrary to the Policy**

Included in the staff allowances of Kshs.2,210,961,000 is an amount of Kshs.477,179,000 relating to accrued staff bonus. Further, the Authority paid an additional Kshs.53,969,800 to various staff for seven (7) months from July 2018 to January 2019 as bonus. However, the bonus payments were not based on individual evaluated performance but on one-month basic salary for all employees, contrary to Paragraph 3.4.3 of the Public Service Commission Rewards and Sanctions Framework May, 2016 which requires 13<sup>th</sup> month basic salary to be paid as bonus based on individual evaluated performance and respective contribution to the institutional performance.

The Authority was therefore, in breach of the Law.

## **2.0 Hospital and Referral Bills not Supported by a Policy**

Included in the establishment expenses of Kshs.19,992,244,000 is an amount of Kshs.620,907,000 relating to hospital and referral bills. The following observations were made:

- i. The Management through Circular Ref HR/1/6/66 dated 01 February, 2018 suspended the provision of Paragraph E.1(b) of the Kenya Ports Authority Human Resources Manual, 2017 which required 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. However, Ministerial approval as required by 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 was not availed for audit review. This resulted in one employee's dependant accumulating a medical bill of Kshs.40,467,906, which according to the Circular has to be settled by the Authority.
- ii. The same Circular suspended the Authority's Human Resources Manual, 2017 provision limiting dependants per employee to one spouse below sixty (60) years in age and four (4) children below twenty-two (22) years. The suspension resulted in enrolment of 1,006 dependants, out of whom twenty-eight (28) spouses were above the age of sixty (60) years and twelve (12) children were above the age of twenty-two (22) years hence an addition cost of Kshs.5,777,300 in medical expenses.
- iii. Included in the hospital and referrals bills is an amount of Kshs.110,981,363 in respect of private inpatient fees for employees in management positions and their dependants. However, this is not provided for in the Kenya Ports Authority Human Resources Manual, 2017 nor were details of employees who are eligible for private hospital services provided for audit verification.

Consequently, the propriety and validity of hospital and referral bills of Kshs.116,758,663 for the year ended 30 June, 2019 could not be confirmed and Authority was therefore, in breach of the Law.

## **3.0 Overtime Allowances**

Also included in the establishment expenses of Kshs.19,992,244,000 is an amount of Kshs.3,162,857,000 overtime allowances compared to Kshs.2,688,474,000 reported in the previous financial year. The following observations were made:

### **3.1 Overpayment of Overtime Allowances**

Included in overtime allowances of Kshs.3,162,857,000 for the year ended 30 June, 2019 is Kshs.1,719,928,799, being overtime allowances paid in excess of 30% and 20% for operations and administrative employees respectively, 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 employees.

Consequently, the propriety and validity of overtime allowances of Kshs.1,719,928,799 for the year ended 30 June, 2019 could not be confirmed.

### **3.2 Overpayment of Third Shift Allowances**

Included in the establishment expenses of Kshs.19,992,244,000 is an amount of Kshs.3,162,857,000 in respect of overtime allowances, out of which Kshs.368,972,447 relates to third shift allowance. An audit review of payroll records indicated that some 1,801 employees whose basic salary totalling Kshs.1,394,437,766 were paid third shift allowances of Kshs.250,268,695, against Kshs.209,165,665 or 15% of basic salary payable resulting to an overpayment of third shift allowances by Kshs.41,103,030. 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.368,972,447 for the year ended 30 June, 2019 could not be confirmed.

### **3.3 Overtime Allowances Paid to Employees on Training Grades**

Further, included in the overtime allowances of Kshs.3,162,857,000 for the year ended 30 June, 2019 is an amount of Kshs.101,579,108, being 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.101,579,108 for the year ended 30 June, 2019 could not be confirmed.

### **3.4 Duty Travel Allowances**

Included in the establishment expenses of Kshs.19,992,244,000 is an amount of Kshs.437,891,000 in respect of duty travel. Records availed for audit review indicated that the Principal Secretary, State Department for Transport on 4 October, 2018 requested the Authority to facilitate air tickets and subsistence allowances amounting to Kshs.1,371,730 for two officers while visiting China and USA on Kenya Ports Authority related matters. However, the purpose of the trip was not disclosed in the letter. Further, on 29 November, 2018, the Principal Secretary vide another letter stated that the two officers extended their stay in China by seven (7) days and requested for payment of additional subsistence allowances for the extended period amounting to Kshs.821,725. However, documentary evidence of travel and the source of funding were not availed for audit review.



Consequently, the propriety of duty travel allowances of Kshs.2,193,455 for the year ended 30 June, 2019 could not be confirmed.

### **3.5 Gender Composition**

The biodata presented for audit review indicated that the Authority had a total of 6,791 employees as at 30 June, 2019, out of whom 5,386 (79.21%) were male while 1,405 (20.69%) were female. This contravened Paragraph B.22 (2) of the Public Service Commission Human Resource Policies and Procedure Manual, 2016 which provides that the Government will endeavor to have a gender balanced Civil Service by ensuring that not more than 2/3 of positions in its establishment are filled by either gender.

Consequently, the Authority was in breach of the Law.

### **3.6 Ethnic Composition**

The biodata presented for audit review as at 30 June, 2019 indicated that the Authority had 2,165 employees in management positions and 4,626 on permanent terms, giving a total to 6,791. Included in management positions is one ethnic community with a total of 1,874 (40.51%) employees, 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, the Authority was in breach of the Law.

### **3.7 Over Commitment of Salary**

Payroll records availed for audit review indicated that in the month of June, 2019 the Authority paid basic salary to two hundred and forty-six (246) 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, the Authority was in breach of the Law.

## **4. Publicity and Advertising Expenses**

As disclosed in Note 8 to the financial statements, the statement of profit and loss and comprehensive income reflects an expenditure of Kshs.4,044,431,000 under administrative expenses which includes an amount of Kshs.462,850,000 in respect of publicity and advertising. Included in publicity and advertising expenses is an amount of Kshs.23,474,184 paid to various companies in the Democratic Republic of Congo and Burundi for media services. However, evidence of competitive bidding for the contracts was not provided for audit review.

Under the circumstances, it was not possible to confirm whether the Authority got value for money from the amount of Kshs.23,474,184 spent on publicity and advertising.

## **5. Corporate Social Responsibility Expenditure**

Included in the administrative expenses of Kshs.4,044,431,000 is an amount of Kshs.125,229,000 relating to corporate social responsibility. The latter balance includes an amount of Kshs.6,086,934 in respect of payments for construction of two hostels at Makahani Secondary School in Kilifi County at a contract sum of Kshs.8,297,562. However, records availed for audit indicated that the Authority procured the works through requests for quotations, contrary to the First Schedule of the Public Procurement and Disposal Regulations, 2006 which sets the maximum amount of Kshs.2,000,000 for a Class A procuring entity for use of requests for quotations for works.

Under the circumstances the Authority may not have obtained value for money on corporate social responsibility expenditure of Kshs.6,086,934 and was in breach of the Law.

## **6. Unsupported Training Expenditure**

The administrative expenses of Kshs.4,044,431,000 also includes an amount of Kshs.447,245,000 in respect of training, out of which Kshs.8,325,900 relates to occupational health safety training and Kshs.6,890,400 consultation fees for training teachers on the new pre-school curriculum. Audit review of available records revealed that the consultants were selected through requests for quotations and no evidence was availed to confirm that a Local Service Order was issued or a contract agreement for provision of the service signed. Further, details of how the trainees were identified and selected were not availed for audit review. In addition, the consultants were not in the register of suppliers.

Further, the procurement was higher than the Kshs.1,000,000 maximum amount allowed for use of requests for quotations by the First Schedule of the Public Procurement and Disposal Regulations, 2006. The procurement also contravened Section 105 (a) of the Public Procurement and Asset Disposal Act, 2015 which provides that a procuring entity may use a request for quotations from the register of suppliers for a procurement if the estimated value of the goods, works or non-consultancy services being procured is less than or equal to the prescribed maximum value for using requests for quotations as prescribed in Regulations.

In the circumstances, the legality and validity of training expenditure of Kshs.15,216,300 for the year ended 30 June, 2019 could not be confirmed.

## **7. Electrical Services Expenditure**

As disclosed in Note 10 to the financial statements, the statement of profit and loss and comprehensive income reflects an expenditure of Kshs.5,976,959,000 under operating expenses which includes an amount of Kshs.513,504,000 in respect of electrical services. Records availed for audit review indicated that the Authority entered into biennial framework contract on 3 November, 2016 for provision of electrical services for two (2) years expiring on 2 November, 2018. An approval for extension of the contract was given on 12 February, 2019. However, examination of records revealed that Local Purchase Orders for electrical works amounting to Kshs.342,385,717 were issued during the period when the framework contract had expired and before approval of the extension. The Management therefore undertook direct procurement contrary to Section 103 (1) of the Public Procurement and Asset Disposal Act, 2015 which provides that a procuring entity may use direct procurement as allowed under sub-section (2) as long as the purpose is not to avoid competition.

Consequently, the Authority was in breach of the Law.

## **8. Lamu Port Housing Project**

As disclosed in Note 11 to the financial statements, the statement of financial position reflects a balance of Kshs.241,554,138,000 under property, plant and equipment operating expenses which includes an amount of Kshs.49,201,730,000 in respect of work in progress. The latter balance includes an amount of Kshs.503,124,577 relating to Lamu Port Police Station and Staff Housing. The following anomalies were noted:

### **8.1 Procurement by the Parent Ministry**

Records availed for audit review indicated that the Ministry of Transport, Infrastructure, Public Works, Housing and Urban Development through a letter reference QD59/9712C/69 dated 04/10/2017 requested the Kenya Ports Authority to make payments amounting to Kshs.110,647,368 to the contractor for Certificate Number 9. The Authority's Board on 10 November, 2017 indicated that the works required an amount of Kshs.961,003,002 to complete and approved an expenditure of Kshs.340,532,154 although the project was not provided for in the Authority's annual budget.

In light of the foregoing, initiation, tendering and awarding of the contract by the parent Ministry is a pointer to override on the Management's budget preparation and implementation which could negatively impact on the Authority's budget and cash flows.

### **8.2 Delayed Completion of the Project and Missing Details**

During physical verification of the project in the month of September 2019, it was observed that major works including parking for the police station, landscaping and fencing of the housing estate, pit latrine at the dispensary and guard house among other works were incomplete yet the expected revised completion date was 8 August, 2018. Therefore, the project was behind schedule by fourteen (14) months.

Further, the contract for the staff police station and staff housing was varied through use of 200mm machine cut coral stones instead of 250mm blocks and decra type roofing material instead of clay tiles. However, instructions from the Project Manager for the changes and approval by the employer were not provided for audit review.

In addition, the staff housing estate comprising twenty-four (2 bedroom) flats, eight – (3 bedroom) flats and two (3 bedroom) bungalows were fully occupied but details of the occupants, allocations and payments of rents were not availed for audit verification. This is contrary to Kenya Ports Authority's Human Resources Manual Paragraph L.3 which states that an employee by virtue of his employment may, subject to availability, be allocated a house owned by the Authority. The Manual further states that an employee allocated an Authority owned house will be charged rent at market rate and will be required to enter into an agreement with the Authority and will be entitled to one house at any given time.

Under the circumstances, the Authority was in breach of the Law and value for money amounting to Kshs.503,124,577 on the project could not be confirmed.

### **8.3 Port Infrastructure and Electrical Repairs**

Records availed for audit review indicated that the Authority incurred expenses amounting to Kshs.3,879,963,385 on port infrastructure repairs and Kshs.646,357,753 on electrical repairs, all totalling to Kshs.4,526,321,138. However, the expenditure was incurred and classified as recurrent expenditure yet it was capital in nature. Further, the amount was subsequently reclassified as Work-in-Progress. However, the approved budget for the capital expenditure was not availed for audit review.

### **8.4 Kisumu Port**

Documents availed for audit review indicated that the Management issued three (3) purchase orders for a total of Kshs.349,184,884, against a budget of Kshs.110,500,000 for capital works at Kisumu Port, out of which Kshs.103,953,185 had been paid as at 30 June, 2019. However, the works were procured under the biennial framework contracts for repairs and maintenance while these were capital works in nature. Further, the Management initiated and procured capital works at a total cost of Kshs.349,184,884 exceeding the budget by Kshs.238,684,884, contrary to Section 44(2) of the Public Procurement and Asset Disposal Act, 2015 which requires an Accounting Officer to ensure that procurements of goods, works and services of a public entity are within the approved budget of that entity.

Further, the works and procurements incurred were not in the procurement plan for the financial year 2018/2019, contrary to Section 45(3) of the Public Procurement and Asset Disposal Act, 2015 which states that all procurement processes shall be within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through an annual procurement plan.

The Authority was therefore, in breach of the Law.

## **9 Unconfirmed Storage Revenue**

As disclosed in Note 6 to the financial statements, the statement of profit and loss and comprehensive income reflects an income of Kshs.52,758,959,000 under operating revenue which includes amounts of Kshs.9,906,122,000 and Kshs.697,600,000 in respect of storage of full containers and storage of empty containers respectively, all totalling to Kshs.10,603,722,000. Records availed for audit review indicated that the Kenya Ports Authority signed agreements with nine (9) 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 Kenya Ports Authority granted the companies rights to handle, hold or store and deliver 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 storages facility, un-availability of stacking space within the Inland Container Depot, Nairobi, growth in trade, any legal framework in place and gazettment and continued gazettment 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 September 2019 at the 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 provided for audit verification.

Consequently, the completeness of the storage revenue of Kshs.10,603,722,000 and 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.

## **10 Irregular Procurement and Creation of a Vendor in Systems, Applications and Products (SAP) System**

Review of procurement and payment records and Systems, Applications and Products (SAP) which is the Authority's main finance software revealed that included in the SAP vendors' list is a vendor which was created on 14 October, 2014 without evidence that it was recommended by any user department. The vendor was also not in the list of prequalified suppliers of the Authority. As such, it is not clear how the vendor was identified and created in the SAP system.

The records further indicates that the vendor undertook Local Purchase Order (LPO) financing of various suppliers of the Authority and was paid a total of Kshs.237,899,724 directly by the Authority for goods and services delivered by the suppliers or contractors for a period of three years from 2014/2015 to 2016/2017 financial years. However, it was noted that the Authority does not have an approved policy on LPO financing by financial institutions.

Under the circumstances, the validity, propriety and legality of payments amounting to Kshs.237,899,724 to the vendor for the three years up to 30 June, 2017 could not be confirmed.

## **11 Services and Systems - Unconfirmed Installation**

The property, plant and equipment balance of Kshs.241,554,138,000 includes an amount of Kshs.10,737,789,000 under services and systems, out of which an amount of Kshs.221,333,738 is in respect of Trunking System – Marine Operations as indicated in the Authority's assets register.

Records availed for audit review indicated that Kenya Ports Authority through open tender No. KPA/022/2015-16/MO identified and contracted a vendor to supply, install and commission VHF digital radio trunking system at a cost of Kshs.45,487,563(USD.445,869). Part of the user requirement was that the system be integrated with the Integrated Security System already installed and in use by the Authority. Further, the Authority used direct procurement for the tender and engaged the same vendor for Phase II - deployment of digital radio communication system. This was based on the requirement of conformity as provided in Section 103(2)d of the Public Procurement and Asset Disposal Act, 2015 which states that the procuring entity, having procured goods, equipment, 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 because of the need for compatibility with existing goods, equipment, technology or services. However, the system is entered in the asset register differently while the procurement was for a different system and therefore direct procurement was not applicable.

Further, the contract was awarded at a contract sum of Kshs.96,722,145 (USD.957,645) inclusive of all taxes as per the tender documents. The delivery period was four (4) months and warranty period of one (1) year with notification of award being sent on 31 May 2017. Available records indicated that the vendor requested the Authority to review the contract price claiming that the VAT element was omitted from the tender documents. However, the tender documents had clearly indicated that prices quoted should be VAT inclusive. Subsequently, the Authority varied the contract price upwards by Kshs.15,475,826 (USD 153,226) or 16% to Kshs.112,197,971(USD 1,110,873).

In addition, the Authority on 18 May, 2018 granted approval of another variation from a contract sum of Kshs.112,197,971(USD.1,110,873) by 25% (Kshs.28,049,518 or USD 277,718) to Kshs.140,247,691(USD 1,388,591). Since the contract had been signed on 31 May, 2017, the approval was contrary to Section 139(3) of the Public Procurement and Asset Disposal Act, 2015 which states that no contract price shall be varied upwards within twelve months from the date of the signing of the contract. Further, the Management did not avail the implementation status of the Phase II - deployment of digital radio communication system.

Under the circumstances, the propriety, existence, value for money and status of services and systems balance of Kshs.185,735,254 as at 30 June, 2019 could not be confirmed.

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

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

### Conclusion

As required by Section 7(1)(a) of the Public Audit Act, 2015, based on the audit procedures performed, except for the matters described in the Basis for Conclusion on Effectiveness of Internal Controls, Risk Management and Governance section of my report, I confirm that, nothing has come to my attention to cause me to believe that internal controls, risk management systems and overall governance were not effective.

#### 1.0 Weak Controls on Management of Overtime

A four-month analysis of the time management system and payroll reports from November 2018 to February 2019 revealed that a hundred and three (103) employees whose workstation is within the Port were paid overtime of Kshs.26,588,009 for 68,880 hours. However, an audit review of the Integrated Security System report that records access to the Port indicated that the hundred and three (103) employees accessed the Port for 2,624 hours of overtime equal to Kshs.956,787, resulting to a variance of Kshs.25,631,221 which has not been explained nor reconciled.

Further, it was observed that overtime requests and allocations were done by sixteen (16) unionisable employees in grades HG1 and HG3, contrary to Kenya Ports Authority Time and Attendance Policy which designates such responsibility to

supervisors in management positions. Therefore, the sixteen (16) unionisable employees requested and allocated overtime for self and their seniors in management amounting to Kshs.10,597,780. This is a pointer to weakness in controls where unionisable staff approve own overtime and that of their seniors or supervisors.

Consequently, the validity of overtime of Kshs.36,229,001 for the year ended 30 June, 2019 could not be confirmed and effectiveness of the controls for overtime could not be ascertained.

## **2.0 Manual Processing of Overtime**

Time management reports availed for audit review indicated that one hundred and fifty-seven (157) employees were exempted from clocking in and out to work. This is contrary to Kenya Ports Authority Time Management Procedure Manual, which states that overtime is paid based on hours worked as per the 2018/2019 Collective Bargain Agreement and Human Resources Manual 2017 and exemption from clocking is not applicable during overtime. As a result, the Management manually processed and paid a total of Kshs.51,869,574, 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, the propriety, accuracy and validity of overtime of Kshs.51,869,574 for the year ended 30 June, 2019 could not be confirmed.

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

## **Responsibilities of Management and the Board of Directors**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards (Accrual Basis) and for maintaining effective 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 and for its assessment of the effectiveness of internal control and overall governance.

In preparing the financial statements, Management is responsible for assessing the Kenya Ports Authority's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the applicable basis of accounting unless the Management is aware of the intention to terminate the Authority or to cease operations.

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.

In addition to the responsibility for the preparation and presentation of the financial statements described above, Management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them, and that public resources are applied in an effective way.

The Board of Directors is charged with governance are responsible for overseeing the Authority's financial reporting process, reviewing the effectiveness of how the Authority monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to overall governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

### **Auditor-General's Responsibilities for the Audit**

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.

In addition to the audit of the financial statements, a compliance review is planned and performed to express a conclusion with limited assurance as to whether, in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them in accordance with the provisions of Article 229(6) of the Constitution and submit the audit report in compliance with Article 229(7) of the Constitution.

Further, in planning and performing the audit of the financial statements and review of compliance, I consider internal control in order to give an assurance on the effectiveness of internal controls, risk management and overall governance processes and systems in accordance with the provisions of Section 7(1)(a) of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. My consideration of the internal control would not necessarily disclose all matters in the internal control that might be material weaknesses under the ISSAIs. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Because of its inherent limitations, internal control may not prevent or detect misstatements and instances of non-compliance. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

As part of an audit conducted 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.

- 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 as a going concern. 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 Kenya Ports Authority to cease to continue as a going concern.
- 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 Kenya Ports 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.



**Nancy Gathungu**  
**AUDITOR-GENERAL**

**Nairobi**

**22 June, 2021**