

REPORT OF THE AUDITOR-GENERAL ON THE KENYA SCHOOL OF LAW FOR THE YEAR ENDED 30 JUNE 2018

REPORT ON THE FINANCIAL STATEMENTS

Disclaimer of Opinion

I have audited the accompanying financial statements of the Kenya School of Law set out on pages 31 to 57 which comprise the statement of financial position as at 30 June 2018, and the statement of financial performance, statement of changes in net assets, statement of cash flows, 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 do not express an opinion on the accompanying financial statements. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on these financial statements.

Basis for Disclaimer of Opinion

1. Going Concern

During the year under review, the Kenya School of Law reported a deficit of Kshs.33,105,866 (2016/17-Surplus Kshs.86,741,677). Further, the statement of financial position reflects current liabilities balance of Kshs.242,459,146 as at 30 June 2018 (2016/2017-Kshs.203,412,742) which exceed the current assets balance of Kshs.221,643,986 (2016/2017-Kshs.250,883,553) by Kshs.20,815,160. Consequently, the School is technically insolvent and the financial statements have been prepared on a going concern basis on the assumption of continued support from government and creditors.

2. Inaccuracies in the Financial Statements

2.1 Discrepancies between Balances in the Financial Statements and Balances in the Ledger

The following discrepancies were noted between balances in the financial statements and balances in the ledger/ supporting schedules:

Item Description	Financial Statement Balance (Kshs)	Ledger Balance/ Supporting Schedules (Kshs)	Variance (Kshs)
Administrative Costs			

Travel accommodation expenses	7,848,179	7,826,429	21,750
Building repairs and maintenance	5,496,365	5,098,595	397,770
Naming/ signage buildings	0	397,770	(397,770)
Staff welfare 1	3,824,662	3,811,162	13,500
Accounts Receivables and Prepayments			
School fees receivable	24,344,130	24,143,420	200,710
Staff receivables	1,909,184	2,179,596	(270,412)
Non-school fees receivable - other	58,393,741	89,125,322	(30,731,581)
Employee Costs			
Gratuity contribution	3,068,167	3,831,044	(762,877)
Consumable Stocks	5,310,595	11,697,718	(6,387,123)
Total	110,195,023	148,111,056	(37,916,033)

No explanation was provided for the differences between the two sets of records.

2.2 Variances between Year 2017/2018 Comparative Figures and the 2016/2017 Audited Financial Statements

The financial statements availed for audit review contained comparative figures which were at variance with the previous year's audited financial statements as summarized below:

Item Description	2017/2018 Comparative Balance (Kshs)	2016/2017 Audited Balance (Kshs)	Difference (Kshs)
School fees income	300,317,189	300,233,189	84,000
Employees costs	221,099,390	227,847,103	(6,747,713)
Administrative costs	213,562,207	241,560,793	(27,998,586)
Operational costs	60,012,678	61,519,785	(1,507,107)
Continuing legal education expenses	12,805,919	13,105,819	(299,900)
Hospitality costs	28,619,362	28,457,642	161,720
Accounts receivables and prepayments	98,829,695	95,775,615	3,054,080
Cash and bank balances	147,816,492	147,814,192	2,300
Property, plant and equipment	2,038,937,605	2,221,092,781	(182,155,176)

Item Description	2017/2018 Comparative Balance (Kshs)	2016/2017 Audited Balance (Kshs)	Difference (Kshs)
Payables and accruals	21,914,194	28,661,907	(6,747,713)
Other current liabilities	175,524,829	174,750,836	773,993
Surplus for the period	123,217,263	86,741,677	36,475,586
Total	3,442,656,823	3,627,561,339	(184,904,516)

The variances totalling to Kshs.184,904,516 have not been explained or reconciled and therefore the accuracy of these financial statements could not be confirmed as at 30 June 2018.

2.3 Statement of Cash Flows

The statement of cash flows reflects cash and cash equivalents balance as at 30 June 2018 of Kshs.103,853,377. However, the movement in the statement of cash flows reflects cash and cash equivalents balance of Kshs.111,879,092 resulting in unexplained variance of Kshs.8,025,715.

Consequently, the accuracy of the statement of cash flows could not be confirmed for the year ended 30 June 2018.

3. Irregular Payments

The statement of financial performance reflects irregular payments of Kshs.111,549,528 which as disclosed under note 27 to the financial statements relates to fraudulent payments. Payment vouchers and other relevant documents in support of the expenditure were not availed for audit review. Further, the reporting template prescribed by the Public Sector Accounting Standard Board and the School's chart of accounts do not provide for such a component in the statement of financial performance. No explanation was provided on why the expenditure was not charged to the specific items it related to as prescribed in the reporting template.

Consequently, the validity of the irregular payments expenditure of Kshs.111,549,528 could not be confirmed.

4. Administrative Costs

The statement of financial performance reflects administrative costs of Kshs.224,842,822 which include an amount of Kshs.18,922,268 relating to other taxes, levies and penalties. Included in the later balance is Kshs.18,827,217 tax arrears and penalties paid during the year. Information available indicate that Kenya Revenue Authority conducted a tax audit for the period July 2012 to December 2016 and concluded that the Institution had a tax liability of Kshs.52,150,275. During the year under review, Kshs.18,827,217 was paid as tax arrears and penalties. No explanation

was provided for failure to remit statutory deductions in time thus avoiding unnecessary fines and penalties. Further, no provision was made for the unpaid tax arrears.

Under the circumstances, the propriety of the tax arrears and penalties totalling to Kshs.18,827,217 could not be confirmed for the year ended 30 June 2018.

5. Employee Costs

The statement of financial performance reflects employee costs of Kshs.228,874,879. However, a payment of Kshs.5,775,593 effected vide general journal No. 20313 was not supported and overstates employee costs by the same amount. The following anomalies were also noted:

- i) Payments totalling Kshs.513,021 in respect of gratuity contributions were not supported.
- ii) Pension employer contribution of Kshs.1,810,292 for the month of June 2018 was omitted from the financial statements.
- iii) Employee contribution of Kshs.978,600 was posted to pension employer contribution instead of employee contribution.
- iv) NSSF Employer contribution of Kshs.29,200 for the month of June 2018 was omitted from the financial statements.
- v) Overtime allowances amounting to Kshs.3,440,880 paid outside payroll vide petty cash vouchers were not supported. In addition, a payment of Kshs.182,700 to a supplier was wrongly posted under overtime allowances.
- vi) Casual wages amounting to Kshs.1,005,643 paid outside payroll vide petty cash vouchers were not supported.
- vii) Basic salaries, commuter allowance, house allowance and leave allowances of Kshs.701,405, Kshs.27,976, Kshs.142,596 and Kshs.167,067 respectively were not supported.
- viii) Expenditure amounting to Kshs.1,541,060 relating to staff was paid from the board expenditure allocation without approval of the board.

In the circumstances, the accuracy, completeness and validity of employee costs of Kshs.228,874,879 for the year ended 30 June 2018 could not be confirmed.

6. Cash and Bank Balances

The statement of financial position reflects cash and bank balance of Kshs.103,853,377 which as disclosed under note 18 to the financial statements is made up of bank

balances in some five (5) bank accounts. However, the following differences were noted between figures in the financial statements and those in the cashbooks;

Account No.	Financial Statements Balance Kshs.	Cashbook Balance Kshs.	Difference Kshs.
2022099224 - Barclays Bank of Kenya	4,095,730	3,785,386	310,344
2022029110 - Barclays Bank of Kenya	7,872,892	9,167,568	(1,294,676)
2022099240 - Barclays Bank of Kenya	2,361,198	3,122,953	(761,755)
1630263144477 - Equity Bank	3,220,963	1,257,985	1,962,978
01129706350500- Cooperative Bank of Kenya	86,302,593	86,101,196	201,397
Total	103,853,376	103,435,088	418,288

Further, the bank reconciliation statements for the five (5) bank accounts were not availed for audit review.

In the circumstances, the validity, accuracy and completeness of the bank balance of Kshs.103,853,377 as at 30 June 2018 could not be confirmed.

7. Property, Plant and Equipment

The statement of financial position reflects property, plant and equipment balance of Kshs.2,256,272,884 as at 30 June 2018. The audit revealed the following unsatisfactory issues;

- i) The leasehold land within which the institution is located valued at Kshs.710,000,000 is registered under the Agricultural Finance Corporation (AFC) and not the Kenya School of Law. Consequently, the ownership status of this land could not be confirmed.
- ii) Included in the property, plant and equipment schedule at note 19 to the financial statements are the following unsupported balances;

Item Description	Amount (Kshs)
Transfer from work in progress	443,066,702
Addition to office equipment	1,629,495
Disposal of motor vehicles	1,995,000
Disposal of furniture	817,088
Total	447,508,285

In the circumstances, the validity, accuracy and completeness of the property, plant and equipment balance of Kshs.2,256,272,884 as at 30 June 2018 could not be confirmed.

8. Other Current Assets

Included in other current assets balance of Kshs.1,050,459 is an amount of Kshs.585,459 described as unreconciled receipts which was not supported or explained.

In the circumstances, the accuracy of other current assets balance of Kshs.1,050,459 as at 30 June 2018 could not be confirmed.

9. Accounts Receivables and Prepayments

9.1 Understatement of Debtors

The statement of financial position reflects accounts receivables and prepayments balance of Kshs.111,429,925 as at 30 June 2018. However, the debtors ageing analysis availed for audit review revealed that the accounts receivables and prepayments balance of Kshs.111,429,925 was reduced by negative balances totalling Kshs.21,805,043 as shown below:

	Item Description	Amount Kshs.
5010003	School Fees Receivable	(4,272,401)
5010008	CPD Receivable	(7,175,326)
5010009	Hospitality Receivable	(3,694,749)
5010004	Non-School Fees Receivable- Other	(6,440,979)
5010006	Staff Receivables	(221,588)
	Total	(21,805,043)

This treatment is contrary to Paragraph 48 of International Public Sector Accounting Standard (IPSAS) No. 1 which prohibits offsetting of assets and liabilities and revenues and expenses unless permitted by an IPSAS. No explanation was provided for this non-compliance.

9.2 Non-School Fees Receivables-Other

Included in the accounts receivables and prepayments balance of Kshs.111,429,925 is a figure of Kshs.58,393,741 relating to non-school fees receivables-other, which has been outstanding for long. Management has not provided evidence of action being taken towards recovery of the long outstanding debt.

9.3 School Fees Receivable

Included in the accounts receivables and prepayments balance of Kshs.111,429,925 is an amount of Kshs.23,989,630 relating to school fees receivable which include

Kshs.11,397,429 due from students whose registration numbers dates back to between 2007 to 2015. Managements has not disclosed action taken to recover this debt.

9.4 Staff Receivables

Included in the accounts receivables and prepayments balance of Kshs.111,429,925 is an amount of Kshs.1,909,184 relating to staff receivable which include an amount of Kshs.1,052,728 due from employees who left the Institution. It is not clear why the management did not recover the outstanding imprest advanced to the employees before their clearance from the Institution. This is contrary to Section 93 (5) of the Public Finance Management Regulations, 2015 which states that a holder of a temporary imprest shall account or surrender the imprest within 7 working days after returning to duty station. Section 93 (6) further provides that in the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate.

In the circumstance, the School is in breach of the law and full recoverability of staff receivables balance of Kshs.1,909,184 as at 30 June 2018 could not be confirmed.

9.5 Provision for Doubtful Debts

Note 16 to the financial statements reflects a provision for doubtful debts of Kshs.3,958,711 made during the year under review. However, the provision for doubtful debts of Kshs.3,958,711 was not supported nor the basis for calculation disclosed.

Under the circumstances, it has not been possible to confirm the, validity, accuracy and completeness of accounts receivables and prepayments balance of Kshs.111,429,925 as at 30 June 2018 and that the balance is fairly stated as at 30 June 2018.

10. Current Liabilities

The statement of financial position reflects current liabilities balance of Kshs.242,459,146 as at 30 June 2018. However, the ageing analysis provided for audit review revealed that the balance of Kshs.242,459,146 was reduced by negative balances totalling to Kshs.4,080,519 as shown below:

Details	Amount Kshs.
Across Tropics Agencies	(1,256,800)
Align Architects	(496,803)
Amc International	(91,211)
Brulto Trading Ltd	(69,580)
E&A Industries Ltd	(34,070)
Hydro-Water Well Ltd	(79,296)

Details	Amount Kshs.
Neatcare Cleaning Service	(104,041)
Toyota E.A Ltd	(45,801)
Niceland Stationery	(289,261)
Stepse Investment	(676,743)
Other current liabilities	(936,913)
Total	(4,080,519)

This treatment is contrary to Paragraph 48 of International Public Sector Accounting Standard (IPSAS) No. 1 which prohibits offsetting of assets and liabilities and revenues and expenses unless permitted by an IPSAS. No explanation was provided for this non-compliance.

Under the circumstances, it has not been possible to confirm the accuracy and completeness of current liabilities balance of Kshs.242,459,146 as at 30 June 2018.

11. Budgetary Performance

During the year under review, the School's actual receipts amounted to Kshs.622,836,131 against budgeted receipts of Kshs.608,040,312 resulting in a revenue surplus of Kshs.14,795,819. Further, actual expenditure for the year amounted to Kshs.576,564,059 against budgeted expenditure of Kshs.668,040,312 resulting in an overall under absorption of Kshs.91,476,253. It is therefore clear that the School did not fully achieve its budget objectives which adversely affected delivery of the intended services to the public. Therefore, there is need for the School to review its budget making process with a view to coming up with a vibrant budget implementation follow up mechanism and feedback process with a view to ensuring that all projects and activities are implemented as planned for the School to meet its mission and objectives for the benefits of the Citizens of Kenya.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

I do not express a conclusion on the lawfulness and effectiveness in the use of public resources as required by Article 229(6) of the Constitution. Because of the significance of the matters described in the Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources and Disclaimer of Opinion sections of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for my audit conclusion.

Basis for Conclusion

1. Stalled Construction Project of an Ultra-modern Library and Moot Courts

As previously reported, a contract for construction of an ultra-modern library and moot courts was awarded to a Contractor at a cost of Kshs.488,704,449 and commenced on 24 June 2013. The construction period was three years and was expected to be completed by September 2016. As at 30 June 2018, Kshs.141,252,215 had been paid to the contractor. However, although construction was still on going as at the time of the audit in March 2019, management did not avail a report on the progress made towards completion of the project.

Consequently, it has not been possible to confirm that the School has obtained value for money from the expenditure of Kshs.141,252,215 incurred on the project as at 30 June 2018.

2. Loss of Kenya School of Law Property on Plot no. LR 2009/6238-HG613

As previously reported, evidence available indicates that Plot No. LR 209/6238 measuring 0.3890 hectares along Bishops Road-Kilimani area has an institutional house (No.HG/613) which was reserved by the Government as the official residence of the School Principal. However, on 3 November 1997, a grant of lease was purportedly issued to a firm, whose directors include a former Principal of the School, by the Commissioner of Lands, vide allotment Ref. No. 34250. Thereafter, a title deed was issued and registered as Grant No. LR.74856. The property was later sold to another firm on 12 June 2002 at a consideration of Kshs.50,000,000 who then charged it to a bank.

The matter was reported to the then Kenya Anti-Corruption Commission who on 26 January 2007 made an application to the High Court Order 56 of the Anti-Corruption and Economic Crimes, 2003. The Court ordered the preservation of the property and restrained the respondents from selling, disposing off, wasting or in any other way dealing with the property for six months. This matter has been pending before High Court in Nairobi under Miscellaneous Application No.42 of 2007 awaiting determination. No effort appears to have been made by the School to have the case expeditiously dispensed with and the property reverted to the School.

In view of the foregoing, the School risks losing the property to third parties.

3. Plot in Embakasi Area

As previously reported, the statement of financial position reflects non-current assets of Kshs.2,256,272,884 as at 30 June 2018. However, in a letter dated 9 April 1991, the Commissioner of Lands forwarded an approved plan No. 268 for a plot in Embakasi near the School of Aviation measuring 6.18 hectares under departmental reference No. 42/14/90/1 of 3 January 1990 which was reserved for future development of the Kenya School of Law. Although all the fees and charges amounting to Kshs.6,122 were paid vide cheque No. 019198 dated 8 September 1999, no title deed was issued despite numerous reminders which were not responded to.

In a turn of events, there was communication between the Director/Chief Executive and Secretary, Council for Legal Education and the former Permanent Secretary Ministry of

Lands, that the Council for Legal Education had resolved to relinquish its interest in the property and the plot should revert to the Commissioner of Lands for reallocation. The Council further sought a refund of fees and charges paid in the process of acquiring the title to the property.

An audit inspection carried out on 12 April 2002 revealed that a small portion of the plot had been alienated and fenced off by third parties. Despite informing the Commissioner of Lands that the plot was in the process of being grabbed through Management Letter Ref. CLE/201/1999/2000 (5) dated 12 April 2002, no action was taken. The School is said to have been subsequently allocated another plot in Karen where it now sits.

Despite the resolution to relinquish its interest on the property which is referred to as LR.No.29/5651 in the correspondences, the School again changed the decision to relinquish interest and wrote to the National Land Commission requesting a review of the matter. In a letter referenced KSL/PR/CONF/IC/VOI.III (257), the School requested the National Land Commission to cancel the title deeds of plot No. LR.209/5659-Embakasi. There is no evidence of any action that has been taken by the National Land Commission on the School's request.

It is not clear why the Council for Legal Education resolved to relinquish its rights to the plot instead of pursuing and safeguarding public property.

Further, the identity of the third parties now occupying the land measuring 6.18 hectares has not been disclosed nor has the School disclosed the size and value of the land in its books of accounts.

In consequence, no progress had been made and the School risks losing the property.

REPORT ON EFFECIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT SYSTEMS AND GOVERNANCE

Conclusion

I do not express a conclusion on the effectiveness of internal controls, risk management and governance as required by Section 7 (1) (a) of the Public Audit Act, 2015. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of my report, I have not been able to obtain sufficient appropriate audit evidence to provide a basis for my audit conclusion.

Responsibilities of Management and Those Charged with Governance

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 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, risk management and governance.

In preparing the financial statements, management is responsible for assessing the School'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 School 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.

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.

Those charged with governance are responsible for overseeing the financial reporting process, reviewing the effectiveness of how the entity 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 governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

Auditor-General's Responsibilities for the Audit

My responsibility is to conduct an audit of the financial statements in accordance with International Standards of Supreme Audit Institutions (ISSAIs) 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. However, because of the matters described in the Basis for Disclaimer of Opinion section of my report, I was not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on these financial statements.

In addition, my responsibility is to express a conclusion about 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, and that public resources are applied in an effective way, 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. I also consider internal control, risk management and governance processes and systems in order to give an assurance on the effectiveness of internal controls, risk management and governance 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. However, because of the matters described in the Basis for Disclaimer of Opinion and Conclusion on Lawfulness and Effectiveness in Use of Public Resources sections of my report, I was not able to obtain sufficient appropriate audit evidence to provide a basis for an audit conclusion.

I am independent of Kenya School of Law 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.



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

Nairobi

14 May 2019