

REPORT OF THE AUDITOR-GENERAL ON COUNTY EXECUTIVE OF KWALE FOR THE YEAR ENDED 30 JUNE, 2022

PREAMBLE

I draw your attention to the contents of my report which is in three parts:

- A. Report on the Financial Statements that considers whether the financial statements are fairly presented in accordance with the applicable financial reporting framework, accounting standards and the relevant laws and regulations that have a direct effect on the financial statements.
- B. Report on Lawfulness and Effectiveness in Use of Public Resources which considers compliance with applicable laws, regulations, policies, gazette notices, circulars, guidelines and manuals and whether public resources are applied in a prudent, efficient, economic, transparent and accountable manner to ensure Government achieves value for money and that such funds are applied for intended purpose.
- C. Report on Effectiveness of Internal Controls, Risk Management and Governance which considers how the entity has instituted checks and balances to guide internal operations. This responds to the effectiveness of the governance structure, the risk management environment and the internal controls, developed and implemented by those charged with governance for orderly, efficient and effective operations of the entity.

An unmodified opinion does not necessarily mean that an entity has complied with all relevant laws and regulations, and that its internal controls, risk management and governance systems are properly designed and were working effectively in the financial year under review.

The three parts of the report are aimed at addressing the statutory roles and responsibilities of the Auditor-General as provided by Article 229 of the Constitution, the Public Finance Management Act, 2012 and the Public Audit Act, 2015. The three parts of the report, when read together constitute the report of the Auditor-General.

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of County Executive of Kwale set out on pages 1 to 80, which comprise the statement of assets and liabilities as at 30 June, 2022 and the statement of receipts and payments, 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 effects of the matter described in the Basis for Qualified Opinion Section of my report, the financial statements present fairly, in all material respects, the financial position of County Executive of Kwale as at 30 June, 2022, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Cash Basis) and comply with the Public Finance Management Act, 2012, and the County Governments Act, 2012.

Basis for Qualified Opinion

Variance in Amounts Transferred to Municipalities

The statement of receipts and payments and as disclosed in Note 7 to the financial statements reflects transfers to other Government entities amounting to Kshs.683,560,774 with Kshs.Nil transfers to Kwale Municipality. However, records maintained by Kwale and Diani Municipalities indicate transfers of Kshs.35,667,055 and Kshs.27,794,004 respectively, resulting to total variance of Kshs.63,461,059 which was not explained or reconciled. Further, the amount transferred to Diani Municipality during the year under review could not be confirmed owing to the Municipality's omission from Note 7 to the financial statements.

In the circumstances, the accuracy and completeness of transfers to other Government entities amounting to Kshs.683,560,774 for the year ended 30 June, 2022 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the County Executive of Kwale 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.

Emphasis of Matter

Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.11,737,353,560 and Kshs.9,082,745,307 respectively, resulting in under-funding of Kshs.2,654,608,253 (or 23%) of the budget. Similarly, the County Executive expended Kshs.9,160,348,753 against an approved budget of Kshs.11,737,353,560, resulting in under-expenditure of Kshs.2,577,004,807 (or 22%) of the budget.

The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Key Audit Matters

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

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.

Basis for Conclusion

1. Late Release of Exchequer

Analysis of exchequer releases for the year 2021/2022 revealed that the County Government of Kwale received an amount of Kshs.888,555,620 after 30 May, 2022 from the exchequer, contrary to Section 17(6) of the Public Finance Management Act, 2012 which provides among others that, 'The National Treasury shall administer the Consolidated Fund in accordance with Article 206 of the Constitution and facilitate payment into that account all money raised or received by or on behalf of the National Government; and pay from that National Exchequer Account without undue delay all amounts that are payable for public services'.

As a result of the delay, service delivery to the County citizens was adversely affected.

2. Wasteful Expenditure - Governor's Official Residence

The statement of receipts and payments reflects expenditure totalling Kshs.2,289,661,740 in respect of use of goods and services and as disclosed under Note 5 to the financial statements. The expenditure includes an amount of Kshs.47,336,107 in respect of rentals of produced assets, out of which Kshs.1,706,370 relates to rent for the Governor's house. However, the rent expense was incurred as a result of failure to complete construction of the stalled Governor's official residence on which a total of Kshs.118,790,822 had been spent as at 30 June, 2022. As of November, 2022, roofing was complete but no fittings had been done.

In the circumstances, the citizens of Kwale County have not realized value for money totalling Kshs.118,790,822 spent on the project for the year ended 30 June, 2022.

3. Delayed Construction of Oncology Centre at Kwale Sub-County Hospital Phase

As disclosed in Note 10 to the financial statements, the acquisition of assets expenditure of Kshs.2,610,913,099 includes domestic payables from previous years of Kshs.1,409,223,452, out of which Kshs.1,165,369, relates to Construction of Oncology Centre at Kwale Sub-County Hospital Phase 1. As previously reported, a total of Kshs.18,190,667 had been utilized in the construction of the Oncology Centre as of 30 June, 2021. However, review of procurement records revealed the project was incomplete and had stalled, about fifteen months after the end of the contract period.

Further, a variation order to renegotiate the contract sum from Kshs.30,000,000 to Kshs.35,803,984 was not provided. The records also indicate that the contract was terminated and re-tendered on 08 April, 2022 and awarded at a contract price of Kshs.15,801,576 with a commencement date of 12 May, 2022 for a period of 120 days. As at 30 June, 2022, no payment had been made and the contractor was also not on site at the time of audit inspection in November, 2022.

Under the circumstances, value for money of the expenditure of Kshs.18,190,667 has not been realized.

4. Construction of Roads - Stalled Projects

Review of project files and physical verification of projects in July, 2022 revealed that four (4) roads with a total contract sum of Kshs.302,876,850 had stalled at various stages as analyzed below:

Cabro paving of Maganyakulo - Mabatani road in Waa Ng'ombeni was awarded at a contract sum of Kshs.6,599,168 with start date of 09 February, 2022 and expected completion date of 25 May, 2022. The works had cabs installed at either side of the road, murraming and compacting done. However, it had stalled at 30% to completion level and the contractor was not on site.

Cabro paving of Sokoni-Tiwi rural health centre road in Tiwi ward was awarded at a contract sum of Kshs.12,299,999 with start date of 09 February, 2022 and expected completion date of 25 May, 2022 had cabs installed at either side of the road, murraming and compacting done. However, it had stalled at 30% to completion level and the contractor was not on site.

Opening and gravelling of Checkpoint at Msulwa in Kubo South was awarded at a contract sum of Kshs.5,999,998 with start date of 07 March, 2022 and expected completion date of 20 June, 2022. However, the contractor was not on site.

County Flagship Project 2 - Tarmacking of Kona Ya Musa - Mabokoni - Kona Ya Masai Road in Ukunda, Gombato/Bongwe wards (Tarmack 6.336 Km long by 7m wide) were awarded at a contract sum of Kshs.277,977,684.60 with start date of 15 April, 2020 and expected completion date of 15 April, 2021. However, the works were at 45% to completion level with 2.52km tarmacked out of 6.336km total length. The Project was terminated awaiting re-tendering.

The expected dates of completion of the projects had long elapsed hence the contractors were in breach of contract and the County Executive did not get value for money spent on the projects.

5. Irregularities in Procurement and Implementation of Projects

Review of project files for three projects costing Kshs.29,557,325 revealed the following procurement anomalies:

Proposed Construction of Tourism Information Sheds at County entry points was awarded at a contract sum of Kshs.4,188,129 with cumulative payment of Kshs.4,188,129 as at 30 June, 2022. The agreement provided for delay rate of outstanding works at 4% compounded monthly, however, there was no proof of payment of the amount by the contractor.

Construction of Mwashanga Dispensary was awarded at a contract sum of Kshs.5,675,314 with cumulative payments totalling to Kshs.5,675,314. The Management used restricted tender method of procurement yet the procurement did not satisfy any of the conditions set under Section 102(1) of the Public Procurement and Asset Disposal Act, 2015. The Section provides that an Accounting Officer of a procuring entity may use restricted tendering if: (a) competition for contract, because of the complex or specialized nature of the goods, works or services is restricted to prequalified tenderers, (b) the time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the goods, works or services to be procured,(c) if there are only a few known suppliers of the whole market of the goods, works or services.

Proposed Construction of Msambweni Sub-County was awarded at a contract sum of Kshs.19,693,882 with cumulative payments totalling Kshs.19,693,882. The tender was advertised on 10 December, 2021 and closed on 17 December, 2021. The bidders were therefore given only seven days instead of fourteen days to submit tenders, contrary to Section 70(4) of the Public Procurement and Asset Disposal Regulations, 2020 which states that 'the procuring entity shall allow the candidates at least fourteen days to prepare and submit their applications to be registered'

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

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 matter described in the Basis for Conclusion on Effectiveness of Internal Controls, Risk Management and Governance section of my report, I confirm that, nothing else has come to my attention to cause me to believe that internal controls, risk management and overall governance were not effective.

Basis for Conclusion

Lack of Risk Management Policy

As previously reported, the County Executive Management had not put in place a risk management policy, strategies and risk register to mitigate against risk. This is in contravention of Regulation 158(1)(a) and (b) of the Public Finance Management (County Governments) Regulations, 2015 which requires the Accounting Officer to ensure that the county government entity develops risk management strategies, which include fraud prevention mechanism; and a system of risk management and internal control that builds robust business operations.

In the circumstances, the County Executive is exposed to losses and interruption of operations due to failure to formulate a risk management policy.

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 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 (Cash Basis) and for maintaining effective internal controls 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 controls, risk management and governance.

In preparing the financial statements, Management is responsible for assessing the County Executive's ability to continue to sustain services, disclosing, as applicable, matters related to sustainability of services and using the applicable basis of accounting unless Management is aware of the intention to dissolve the County Executive or cease operations.

The 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 County Executive's financial reporting process, reviewing the effectiveness of how Management 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

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 audit is planned and performed 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.

Further, in planning and performing the audit of the financial statements and audit of compliance, I consider internal controls in order to give an assurance on the effectiveness of internal controls, risk management and 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 controls would not necessarily disclose all matters in the internal controls 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 controls 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 applicable 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 County Executive's ability to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the County Executive to cease to sustain its services.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of the County Executive 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 the 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.



CPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

21 February, 2023