

# REPORT OF THE AUDITOR-GENERAL ON COUNTY ASSEMBLY OF KISUMU FOR THE YEAR ENDED 30 JUNE, 2022

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## 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 the 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 Assembly of Kisumu set out on pages 1 to 30, which comprise the statement of financial 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 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 County Assembly of Kisumu 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.

## **Basis for Qualified Opinion**

### **1. Unconfirmed Office and General Supplies and Services Expenses**

The statement of receipts and payments reflects use of goods and services balance of Kshs.390,285,538 as disclosed in Note 5 to the financial statements. The balance includes office and general supplies and services amounting to Kshs.17,131,880, which further includes an amount of Kshs.1,455,695 paid to two companies. However, signed contracts between the County Assembly and the two companies were not provided for audit verification.

In the circumstances, the propriety of office and general supplies and services expenditure amounting to Kshs.1,455,695 could not be confirmed.

### **2. Unsupported Communication Supplies and Services**

The statement of receipts and payments reflects use of goods and services balance of Kshs.390,285,538 which, as disclosed in Note 5 to the financial statements, includes communication supplies and services amount of Kshs.2,765,668. Included in the amount is Kshs.885,600 paid for internet connections and Kshs.934,000 paid to a telecom company for telephone, telex, facsimile and mobile phone services. However, no documentary evidence was provided to support the expenditure.

In the circumstances, the propriety of communication supplies and services expenditure totalling to Kshs.1,819,600 could not be confirmed.

### **3. Irregular Charge of Other Operating Expenses**

The statement of receipts and payments reflects use of goods and services amount of Kshs.390,285,538 as disclosed in Note 5 to the financial statements, which includes other operating expenses of Kshs.84,488,131. The amount includes legal fees amounting to Kshs.1,109,982 for a legal suit against the former speaker for recovery of outstanding car and mortgage loans amounting to Kshs.8,389,339. However, the legal fees was charged to the County Assembly instead of charging to the car and mortgage Fund.

In the circumstances, the regularity of other operating expenses of Kshs.1,109,982 could not be confirmed.

### **4. Irregular Subscriptions**

The statement of receipts and payments reflects use of goods and services amounting to Kshs.390,285,538. The amount includes other operating expenses amounting to Kshs.84,488,131 as disclosed in Note 5 to the financial statements. The expenses include subscriptions paid to the County Assemblies Forum (CAF) and the Society of Clerks at the Table (SOCATT) of Kshs.4,000,000 and Kshs.1,000,000 respectively. However, the payments were not authorized by any law.

In the circumstances, the propriety of payments totalling to Kshs.5,000,000 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of the County Assembly of Kisumu 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 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. Outstanding Tax Liability**

The statement of receipts and payments reflects compensation of employees amounting to Kshs.318,399,031. Review of records revealed that the County Assembly owes Kenya Revenue Authority (KRA) PAYE totalling to Kshs.70,989,650 based on the assessment of tax liability for the period between July, 2015 to June, 2018 dated 2 March, 2021. The tax liability arose from a tax of Kshs.18,142,110, penalties of Kshs,45,148,581 and interest of Kshs.7,698,958. This was contrary to Section 37(1) of the Income Tax Act which stipulates that an employer paying emoluments to an employee shall deduct therefrom, and account for tax thereon, to such extent and in such manner as may be prescribed.

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

#### **2. Non-Compliance with the National Cohesion and Integration Act, 2008**

Review of the County staff establishment revealed that, out of the 89 employees, 80 or 90% belong to the dominant ethnic community. This was contrary to Section 7(2) of the National Cohesion and Integration Act, 2008 which stipulates that no public establishment shall have more than one third of its staff from the same ethnic community.

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

#### **3. Non-Compliance with the Public Procurement and Asset Disposal Regulation, 2020**

During the year under review, the County Assembly spent an amount of Kshs.2,975,800 on procurement of sports gears, which had been reserved for the AGPO group. However, the AGPO registration certificate of the supplier was not provided for audit verification.

This was contrary to Regulation 145 of the Public Procurement and Asset Disposal Regulations, 2020 which requires that all small, micro and medium enterprise groups or disadvantaged groups shall qualify to benefit from a preference and reservation scheme if they are registered by The National Treasury.

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

#### **4. Non-Compliance with the Third Rule on Salary Deduction**

Review of the payroll revealed that seven (7) employees earned net salaries less than a third of their basic pay. This was contrary to Section 19(3) of Employment Act, 2007 which stipulates that the total amount of all deductions which may be made by an employer from the wages of his employee at any one time shall not exceed two thirds of such wages or such additional or other amount as may be prescribed. No effort appears to have been made by the County Assembly to correct the situation.

In the circumstances, Management was in breach of the Employment Act, 2007.

#### **5. Irregular Payments Made Outside the Integrated Personnel and Payroll Database (IPPD)**

The statement of receipts and payments reflects compensation of employees amounting to Kshs.318,399,031. The amount includes an amount of Kshs.67,140,758 paid to Ward staff, Members of County Assembly and Board Members outside of the IPPD System. This was contrary to The Treasury Circular No.13/2019 dated 28 August, 2019 which states that the allocation of personnel emoluments must be supported by Integrated Personnel Payroll Data (IPPD) and each Ministry, Department and Agency (MDA) will be required to provide this information to support personnel requirements. No explanation was provided for failure to process the salaries in the IPPD data base.

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, I confirm that, nothing has come to my attention to cause me to believe that internal controls, risk management and overall governance were not effective.

#### **Basis for Conclusion**

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 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 controls, risk management and overall governance.

In preparing the financial statements, Management is responsible for assessing the County Assembly'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 Assembly 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.

Those charged with governance are responsible for overseeing the County Assembly'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 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 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 Assembly's ability to continue to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause the County Assembly 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 Assembly 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.



**CPA Nancy Gathungu, CBS**  
**AUDITOR-GENERAL**

**Nairobi**

**20 April, 2023**