REPUBLIC OF KENYA

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OFFICE OF THE AUDITOR-GENERAL

Enhancing Accountability

REPORT

OF

THE AUDITOR-GENERAL

ON

MIWANI SUGAR COMPANY (1989) LIMITED (IN RECEIVERSHIP)

FOR THE YEAR ENDED 30 JUNE, 2025

REPUBLIC OF KENYA

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REPORT OF THE AUDITOR-GENERAL ON MIWANI SUGAR COMPANY (1989) LIMITED (IN RECEIVERSHIP) FOR THE YEAR ENDED 30 JUNE, 2025

PREAMBLE

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

A. Report on 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 the 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 the Government achieves value for money and that such funds are applied for the intended purpose; and,

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, risk management environment and internal controls, developed and implemented by those charged with governance for orderly, efficient and effective operations of the entity.

A Disclaimer of Opinion is issued when the Auditor-General is unable to obtain sufficient appropriate audit evidence to form an opinion on the financial statements. The Report on Financial Statements should be read together with the Report on Lawfulness and Effectiveness in the Use of Public Resources, and the Report on Effectiveness of Internal Controls, Risk Management and Governance.

REPORT ON THE FINANCIAL STATEMENTS

Disclaimer of Opinion

I have audited the accompanying financial statements of Miwani Sugar Company (1989) Limited (In Receivership) set out on pages 1 to 18, which comprise of the statement of financial position as at 30 June, 2025 and the statement of profit or loss & 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 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 and appropriate audit evidence to provide a basis for an audit opinion on these financial statements.

Basis for Disclaimer of Opinion

1. Material Uncertainty Related to Going Concern

The statement of profit or loss & other comprehensive income reflects a loss of Kshs.67,511,159 (2023/2024 – loss Kshs.187,428,047). The accumulated loss increased from Kshs.1,944,730,143 to Kshs.2,009,618,299. In addition, the current assets of the company were Kshs.188,277,637 and the current liabilities amounted to Kshs.738,419,405 resulting to a negative working capital of Kshs.550,141,768. The financial statements have however, been prepared on a going concern basis. This basis may not be appropriate given that the Company was placed in receivership by lenders on 15 March, 2001. In addition, the Government has agreed to release the land, which is its main asset to a private entity that had been embroiled in a legal battle with the Company for a long time. The going concern has been disclosed in Note 3 to the financial statements.

In the circumstances, the continued operations of the Company are dependent on Government and its creditors.

2. Unsupported Transfer of Ownership

The statement of financial position reflects total non-current assets and non-current liabilities of Kshs.2,955,677,096 and Kshs.80,234,694 respectively. Information provided indicate that the Management and ownership of these assets and liabilities had been taken over by a private entity pursuant to a Court Order and written instructions from the Principal Secretary, State Department for Agriculture. The process of handing over started in January, 2025 after a prolonged legal dispute on the land ownership. Further, the Company's employees were declared redundant and the new Management undertook new recruitment in the months of August and September, 2025 and appointment letters issued under new contractual terms. However, Management did not submit the Company and its assets handover reports as at the date of this report. In addition, details of the due process that was followed in the lead up to the selection of take over as a viable model for the transformation and rehabilitation of the sugar company was not provided for audit review.

In addition, evidence of due diligence, valuation of the assets, anticipated return on investment and anticipated benefits to the Public was not demonstrated.

This was contrary to Section 68(2) of the Public Finance Management Act, 2012 which states that in the performance of a function under subsection (1), an accounting officer shall ensure that the entity keeps financial and accounting records that comply with this Act and ensure that all contracts entered into by the entity are lawful and are complied with.

In the circumstances, the credibility of the take-over process and existence of an effective mechanism to safeguard the Company's assets and premises could not be confirmed.

3. Variance in Financial Statements

The statement of profit or loss and other comprehensive income and as disclosed in Note 5 to the financial statements reflects cost of sales of Kshs.47,596,670. However, review of the cane sales analysis data submitted for audit revealed that the cost of sales amounted to Kshs.47,439,479 resulting to unexplained variance of Kshs.157,191. Further, the statement and Note 7 to the financial statements reflects administration and establishment expenses of Kshs.153,590,926 which include Kshs.59,476,730 relating to salaries and wages while the supporting ledger reflects an amount of Kshs.59,951,896 resulting to unreconciled variance of Kshs.475,167.

In addition, the statement of financial position reflects trade and other payables of Kshs.678,264,599 which includes other creditors and accruals of Kshs.270,704,518 as disclosed in Note 20 to the financial statements. However, the supporting ledgers provided for audit reflect Kshs.257,784,645 resulting to an unexplained and an unreconciled variance of Kshs.12,919,873.

In the circumstances, the accuracy and completeness of the financial statements could not be confirmed.

4. Unsupported Legal Fees

The statement of financial position and as disclosed in Note 20 to the financial statements reflect trade and other payables balance of Kshs.678,264,599 which includes Kshs.1,560,000 in respect of accrued legal fees. However, included in the payables are accrued legal fees of Kshs.750,000 that was not supported by any evidence of court attendance and itemized billing to inform charges shown in the fee notes as per schedule 6 of the Advocates Remuneration Order, 2014.

In the circumstances, the occurrence, and completeness of legal expenditure of Kshs.750,000 could not be confirmed.

5. Unsupported and Long Outstanding Trade and Other Payables

The statement of financial position and as disclosed in Note 20 to the financial statements reflects trade and other payables balance of Kshs.678,264,599. However, the balance was not supported with detailed ledgers or schedules and an ageing analysis per category showing the opening balance, additions and payments in the year to arrive at the closing balance. Further, review of the schedules provided revealed that payables totaling to Kshs.672,810,680 have been long outstanding with some dating as far as twenty (20) years ago or pre receivership period. No plausible explanation was provided on the debt including measures put in place by Management to clear the debt.

In addition, the Company declared all its employees redundant and recruited afresh. However, it is not clear and no evidence has been provided to show that adequate provisions have been made for all the employees' severance pay and all attendant costs.

Further, Note 20 to the financial statements reflect an amount of Kshs.270,704,518 in respect of other creditors and accruals. However, the balance includes long outstanding audit fees amounting to Kshs.3,000,000 which have remained unpaid for over six (6) years.

In the circumstances, the accuracy and completeness of the long outstanding trade and other payables balance of Kshs.678,264,599 could not be confirmed.

6. Unsupported Trade and Other Receivables

The statement of financial position and as disclosed in Note 15 to the financial statements reflects trade and other receivables net balance of Kshs.1,959,462. Management has made a provision for doubtful debts of Kshs.90,835,444. However, the provision was not supported with specific schedules or approved policy. Further, the trade and other receivables include Kshs.867,462 in respect of prepayments and sundry receivables. However, schedule of salary advances against June salaries of Kshs.940,000 resulting to unexplained variance of Kshs.72,538. Evidence of efforts to recover the amount from the employees before the take-over was not provided for audit review.

In the circumstances, the accuracy and recoverability of the trade and other receivables balance of Kshs.1,959,462 could not be confirmed.

7. Unsupported Tender Evaluation and Awarding Process

Review of sampled payment vouchers revealed that although goods and services amounting to Kshs.2,600,154 were procured and delivered, Management did not provide the following procurement records for audit verification;

i. Letter of notification of award to the successful tenderer in accordance with Section 87 of the Public Procurement and Asset Disposal Act, 2015 which requires that a person submitting the successful tender is notified under subsection (1), the accounting officer of the procuring entity shall also notify in writing all other persons submitting tenders that their tenders were not successful, disclosing the successful tenderer as appropriate and reasons thereof.
ii. Letter of acceptance from the successful bidder as per Section 87(2) of the Public Procurement and Asset Disposal Act, 2015.
iii. Notification to unsuccessful bidders in accordance with Section 87(3) of the Public Procurement and Asset Disposal Act, 2015.

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

8. Lack of Market Survey Reports

Management procured tyres of various sizes for Kshs.8,684,413 from two firms. However, no evidence was provided to demonstrate that a market survey was conducted to confirm that the offers were at prevailing market prices, contrary to

Regulation 90(1)(d)(ii) of the Public Procurement and Asset Disposal Regulations, 2020, which requires accounting officers to ensure offers are at prevailing market prices before entering into contracts.

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

9. Cash Procurements Beyond Limits

Management incurred an expenditure amounting to Kshs.184,130 on the purchase of office stationery and printing. However, the procurements were made in cash exceeding threshold of Kshs.50,000 per item per financial year for goods and services required under the second schedule threshold matrix of the Public Procurement and Asset Disposal Regulations, 2020.

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

10. Non-Compliance with National Cohesion and Integration Act, 2008

Review of payroll records maintained by Management revealed that the Company had ninety-three (93) employees out of which fifty-eight (58) or sixty two percent (62%) were from the dominant ethnic community in the region. This was contrary to Section 7(2) of the National Cohesion and Integration Act, 2008 which states that, "all public offices shall seek to represent the diversity of the people of Kenya in employment of staff and that no public institution shall have more than one third of its staff establishment from the same ethnic community". Further, out of eighty-two (82) or 88% were male as compared to eleven (11) or 12% female contrary to the requirement that 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.

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

11. Non-Remittance of Agency Taxes and Penalties

The statement of financial position and as disclosed in Note 20 to the financial statements reflects trade and other payables balance of Kshs.678,264,599 which includes agency taxes and penalties of Kshs.1,115,770. Review of the supporting documents provided reflected KRA VAT credit balance of Kshs.1,560,985 and agency taxes and penalties debit balance of Kshs.2,676,756 that were yet to be cleared as at year end. This was contrary to Section 19 (1)(2) of the Value Added Tax Act, 2023 which states that tax shall be due and payable at the time of supply. Section 2 states Notwithstanding the provision of subsection (1), a person may defer payment of tax due to a date not later than the twentieth day of the month succeeding that in which the tax became due.

In the circumstances, Management was in breach of law.

12. Ineffective Internal Audit Function

Review of the Company's internal controls revealed that there were no reliable internal audit reviews carried out during the year under review. Although Management explained that there was an arrangement with Muhoroni Sugar Company (In Receivership), no audits were carried out. This was contrary to Section 73(3)(b) of the Public Finance Management Act, 2012 which requires that the Internal Auditor shall conduct internal auditing which includes risk-based, value-for-money and systems audits aimed at strengthening internal control mechanisms that could have an impact on achievement of the strategic objectives of the entity.

In the absence of a proper functioning internal audit unit and it is evident that monitoring and review of the effectiveness of the internal audit processes, review of internal controls, risk management systems and financial statements among other functions did not occur which may have affected good corporate governance of the Company.

In the circumstances, the effectiveness of the Company's internal controls could not be confirmed

13. Management of Inventories

The statement of financial position and as disclosed in Note 13 to the financial statements reflects inventories net amount of Kshs.924,886 is net of provision of obsolete inventories of Kshs.47,438,029. However, details of the obsolete stock were not provided for audit review contrary IAS 2:36 which states that the financial statements shall disclose the total carrying amount of inventories and the carrying amount in classifications appropriate to the entity.

In the circumstances, it was not possible to confirm whether there were effective internal controls in relation to stores management.

14. Incomplete Fixed Assets Register

Review of the fixed assets register provided by Management revealed that the Company owned property, plant and equipment valued at Kshs.2,838,815,741. However, the asset register maintained was not prepared in a format prescribed by Regulation 139(1) of the Public Finance Management (National Government) Regulations, 2015 whose minimum requirements are: acquisition dates, size of the land (ha), sources of funds, mode of acquisition, current location, ownership status, estimated useful life and the cost of construction.

This was contrary to Regulation 139(1) of the Public Finance Management (National Government) Regulations, 2015 which requires an Accounting Officer of a National Government entity to take full responsibility and ensure that proper control systems exist for assets and that preventative mechanisms are in place to eliminate theft, security threats, losses, wastage, and misuse and that movement and conditions of assets can be tracked.

In the circumstances, existence of effective internal controls on management of assets could not be confirmed.

15. Unresolved Prior Year Issues

In the audit of previous years, several issues were raised in the Disclaimer of Opinion. However, although Management has indicated that these matters are resolved, no evidence was provided to show how the issues were resolved as shown in **Appendix I** as at 30 June, 2025.

REPORT ON THE LAWFULNESS AND EFFECTIVENESS IN THE 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 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.

REPORT ON THE EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT 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 and appropriate audit evidence to provide a basis for my audit conclusion.

REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

Conclusion

As required by Companies Act, 2015, I report based on my audit that I did not obtain all the information and explanations which to the best of my knowledge and belief were necessary for the purpose of the audit.

Responsibilities of the 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 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 Company's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless Management is aware of the intention 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 comply with the authorities which govern them and that public resources are applied in an effective way.

The Board of Directors responsible for overseeing the Company'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

My responsibility is to conduct an audit of the financial statements in accordance with Article 229(4) of the Constitution, Section 35 of the Public Audit Act, 2015 and the International Standards of Supreme Audit Institutions (ISSAIs). The standards require that, in conducting the audit, I obtain reasonable assurance about whether the financial statements as a whole are free from material misstatements, whether due to fraud or error and to issue an auditor's report that includes my opinion in accordance with Section 48 of the Public Audit Act, 2015. 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 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 conducting the audit, Article 229(6) of the Constitution also requires that I express a conclusion on whether or not 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 addition, I consider the entity's control environment 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.

Further, I am required to submit the audit report in accordance with Article 229(7) of the Constitution.

Detailed description of my responsibilities for the audit is located at the Office of the Auditor-General's website at: https://www.oagkenya.go.ke/auditor-generals-responsibilities-for-audit/. This description forms part of my auditor's report.

FCPA Nancy Gathungu, CBS
AUDITOR-GENERAL

Nairobi

09 December, 2025

APPENDICES

Appendix I :Unresolved Prior Year Issues

S/No.	Matters
1.	Going Concern
2.	Unsupported Prior Year Adjustments
3.	Variances in the Statement of Changes in Equity
4.	Inaccurate Disclosure of Revenue on Sale of Cane
5.	Miscellaneous Income
6.	Gratuity/Severance Increase
7.	Unsupported Administration and Establishment Expenses
8.	Unreconciled Bank and Cash Balances
9.	Unsupported Bank Overdraft
10.	Unsupported Trade and Other Receivables
11.	Long Outstanding and Unsupported Payables
12.	Unsupported Borrowings
13.	Budgetary Control and Performance
14.	Unresolved Impaired Receivables
15.	Unauthorized Impaired Receivables
16.	Management of Inventories
17.	Failure to Maintain a Fixed Assets Register
18.	Fully Depreciated Assets