

REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

FOURTH SESSION, TENTH PARLIAMENT

SECOND REPORT

OF THE

LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE

ON THE

THREE CITY COUNCILS (NAIROBI, MOMBASA AND KISUMU)

VOLUME II

Clerk's Chambers

Kenya National Assembly

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Table of contents

ABBREVIATIONS...	4
1.0. PREFACE	5
1.7. COMMON AUDIT QUERIES AMONG LOCAL AUTHORITIES AS NOTED BY THE AUDITOR GENERAL.....	9
1.7.1. Non-Submission, Late Submission, Opening Balances, Format, Completeness and Accuracy of the Accounts	9
1.7.2 Fixed Assets	11
1.7.3 Renewals Funds.....	12
1.7.4 Cash & Bank Balances	13
1.7.5 Debtors & Prepayments.....	13
1.7.6 Creditors & Accruals.....	13
1.7.7 Local Authorities Transfer Fund (LATF).....	14
1.7.8 Imprest, Advances and Allowances	14
1.7.9 Irregular Procurement/Financial Improprieties	15
1.7.10 Obvious inaccuracies in the accounts submitted.....	15
1.7.11 Non-response to audit queries.....	16
1.8 GENERAL OBSERVATIONS AND RECOMMENDATIONS.....	17
2.0 BACKGROUND TO GOVERNANCE IN KENYA'S THREE CITIES (CITY COUNCIL OF NAIROBI, CITY COUNCIL OF MOMBASA AND CITY COUNCIL OF KISUMU).....	24
3.0 CITY COUNCIL OF NAIROBI.....	26
4.0 CITY COUNCIL OF KISUMU.....	50
5.0 CITY COUNCIL OF MOMBASA.....	61
ANNEXTURES	70
ANNEX 1 - COMMITTEE MINUTES	
ANNEX 2 - SPECIAL AUDIT OF CITY COUNCIL OF KISUMU.....	

• ANNEX 3 – VALUATION OF EMBAKASI (AIRFORCE BASE) LAND BY MINISTRY
OF LANDS.....

• ANNEX 4 – FORENSIC AUDIT OF SUNDRY CREDITORS IN CCN.....

ANNEX 5 – CHANGAMWE ESTATE RESIDENTS’ GROUP

ABBREVIATIONS

CDI		Constituency Development Fund
CLOR		Contribution in Lieu of Rates
EACC	-	Ethics and Anti-Corruption Commission
EIA	-	Environmental Impact Assessment
FAR		Fixed Assets Register
ICPAK	-	Institute of Certified Public Accountants of Kenya
IPSAS		International Public Sector Accounting Standards
LAIFOMS	-	Local Authorities Integrated Financial and Operational Management System
LASDAP	-	Local Authority Service Delivery Action Plan
LATF	-	Local Authorities Transfer Fund
LGLA		Local Government Loans Authority
LSK	-	Law Society of Kenya
NHIF	-	National Health Insurance Fund
NSSF	-	National Social Security Fund
PS	-	Permanent Secretary
RLGO		Regional Local Government Officer
RMLF	-	Roads Maintenance Levy Fund
SAS		Simple Accounting Standards

REPORT OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE

1.0.0 PREFACE

Mr Speaker Sir,

On behalf of the members of the Local Authorities and Funds Accounts Committee and pursuant to the provisions of the Standing Order No 181(3), it is my great pleasure and privilege to present to the House the report and recommendations thereon of the Committee on its Third annual Report

1 1.0 COMMITTEE MANDATE

The Local Authorities and Funds Accounts Committee is established pursuant to the provisions of Standing Order No 189 which states that:-

“There shall be a select committee to be designated the Local Authorities and Funds Accounts Committee for the examination of the accounts showing the appropriation of the sum voted by the House to meet the public expenditure in local authorities and all other funds and of such other accounts laid before the House as the committee may think fit”

The mandate of the Committee therefore is to scrutinize public expenditure in Local Authorities and devolved funds so as to ensure that the value for the money voted by the House is realized. The Committee was formed to strengthen parliamentary oversight in Local Authorities and the emerging devolved funds voted by the House, so as to:-

- (i) Detect, stop and prevent abuse, arbitrary, illegal or unconstitutional application of public funds;
- (ii) Hold government to account, in respect of resources and authority exercised on behalf of the public, specifically stop waste and abuse, improve efficiency, effectiveness and impacts.

(iii) Ensure government expenditure as approved by Parliament are expended and delivered.

(iv) Improve transparency of Government operations to enhance public trust and confidence.

In executing its mandate the Committee relies on the annual reports and on special audits prepared by the Kenya National Audit Office on Local Authorities and Funds Accounts expenditure.

1.2.0 COMMITTEE MEMBERS

The membership of the Committee comprises the following members -

The Hon Thomas L. Mwadeghu, MP (Chairperson)

The Hon Benjamin Langat, MP (Vice - Chairperson)

The Hon Charles M. Nyamai, MP

The Hon Peter Mwathi, MP

The Hon Abdul Bahari, MP

The Hon Pollym O. Anyango, MP

The Hon Nemesvus Warugongo, MP

The Hon Wilson Litole, MP

The Hon Joseph Gitau, MP

The Hon Harun Mwau, MP

The Hon Moses Ole Sakuda, MP

Following the appointment of Hon Jamleck Kamau, MP to the Cabinet, he ceased being a member of the Committee and was replaced by Hon John

Harun Mwan MP Hon Moses Ole Sakuda, MP was also appointed to the Committee in October, 2012

1.3.0 COMMITTEE SITTINGS

The Committee commenced its sittings on 27th January 2011 and 15 sittings with the City Councils were held during the period. The sittings comprised of Evidence taking and Inspection tours

1.4.0 COMMITTEE WORKLOAD

The Committee is expected to examine the accounts of all the 175 Local Authorities in Kenya beginning FY 2003/2004 (the period when the Public Audit Act took effect), together with the accounts of other devolved funds such as Constituencies Development Fund (CDF), Roads Maintenance Levy Fund, Tourist Trust Fund, Small and Micro Enterprise Fund, Community Development Trust Fund. The Tourist Trust Fund is however defunct and is in the process of being wound up

Previously the accounts of Local Authorities were not examined by Parliament due to the huge backlog that Public Accounts Committee had then. It is upon this background that the Local Authorities and Funds Accounts Committee was established and for the period under review (2011-2012) we have been able to examine the accounts of 64 Local Authorities herein referred to as Councils

Ninety five percent of the work involved examining Chief Officers on audit queries raised by the Auditor General on the accounts of the Local Authorities.

The Committee also discussed cross cutting issues in the city councils with the Permanent Secretary, Ministry of Local Government. Further, the Committee held meetings with the Permanent Secretary, Ministry of Lands on

issues of land in City Council of Nairobi and the City of Kisumu. All minutes of the sittings on evidence taking are annexed to this report.

1.5.0 EVIDENCE TAKING

The Committee received both oral and documentary evidence during its sittings and fact finding visits. The purpose of the fact finding visits were to collect additional information and to physically verify the existence of projects queried in the audit reports.

During the examination of the accounts of the city councils, the Committee noted with concern the following cross cutting issues -

- (i) Lack of certified accounts.
- (ii) Production of accounts without books of accounts.
- (iii) Presentation of unsigned accounts to the Auditor General.
- (iv) The quality of responses to audit queries were wanting.
- (v) Chief Officers did not take seriously the audit queries raised by the Auditor General.
- (vi) The level of unpreparedness of Chief Officers. Chief Officers appeared unaware of the expectations from the Committee and how to respond to queries.
- (vii) The lack of coordination between the Ministry Headquarters and the city councils.
- (viii) Failure to prepare Fixed Assets Registers.
- (ix) Spending revenue at source without banking intact as required by financial regulations.
- (x) Failure to recover imprest and allowances in time as required by financial regulations.

(xi) The Chief Officers who appeared before the Committee did not adequately respond to financial and management queries raised either by the Committee or in the Auditor General's report

All the witnesses were subjected to thorough interrogation by Members of the Committee who analyzed both oral and written submissions critically

1.6.0 INSPECTION TOURS

The Committee undertook an inspection tour of Changamwe Housing Estate in the City Council of Mombasa. The purpose of this inspection tour was in response to a petition sent to the Committee by residents of the estate, that is, the Changamwe Estate Residents' Group. The Committee also visited Boreholes in Maweni and Makoneni, Rehabilitation of health centre in Jomvu Kuu, Equipping of health centre in Mwakirunge, Renovation of Port Reiz social hall and Storm water drainage at Leisure Freretown during its regular inspection tours.

1.7 COMMON AUDIT QUERIES AMONG LOCAL AUTHORITIES AS NOTED BY THE AUDITOR GENERAL

The following audit queries (qualification points) were noted by the Auditor General and were cut across the accounts of Local Authorities -

1.7.1. Non-Submission, Late Submission, Opening Balances, Format, Completeness and Accuracy of the Accounts

Non-Submission

It was noted that many of the local authorities did not keep proper books of accounts for many years prior to the coming into force of the Audit Act in 2003. The failure to prepare books of accounts led to errors in opening balances for subsequent years. Lack of records and poor record-keeping in many cases led to non-submission of accounts.

The Committee noted that with the introduction of Local Authorities Transfer Fund (LATF) conditionalities councils rushed to prepare inaccurate or falsified

accounts on their own or hired private accounting firms/consultants to prepare the books of accounts so as to meet the requirement and receive the funds (LAFI)

The Committee further noted that in this rush the accounting firm disregarded their professional code of conduct and performed shoddy work of preparing accounts without books of original entry, using unauthorized format receiving payments without value for money, and presenting inaccurate accounts. The Committee noted that Githongo & Associates did the accounts of the City Council of Nairobi, Matengo & Associates did the accounts for City Council of Kisumu and Njoroge & Associates did accounts for City Council of Mombasa

The Committee recommends that the Institute of Certified Public Accountants of Kenya (ICPAK) and its respective Disciplinary Committee should take appropriate action against the three accounting firms for deliberate misconduct and for their failure to adhere to proper accounting and financial standards. Further, the Ministry of Local Government should blacklist them, and preclude them from future award of contracts.

Opening Balances and Accuracy of the Accounts

In the absence of the audited and certified accounts for those years, the source and accuracy of the opening balances for subsequent years could not be confirmed by the Auditor General

Format of the Accounts

Most Councils prepared their abstracts of accounts using the Simplified Accounting System (SAS) format which had not been approved by the Minister for Local Government as required under section 229(2) of the Local Government Act, Cap. 265. This was challenge to Local Authorities prior to the introduction and gazettelement of IPSAS by the Minister for local Government in 2008.

The hired accountants ignorantly prepared the accounts without consultation on the law and the Ministry. The wrong formats did not meet the requirements of the preparation and audit of those accounts

The Committee noted that at present, the three city councils had the Local Authorities Integrated Financial and Operations Management System

(LAI FOMS) implemented on them. The Committee recommends that all councils should be automated to improve format, storage and accuracy of their accounts.

The Committee made the following observations:-

- When accounts of public funds such as LA TF are not submitted for audit, it is an indication that the accounts are either not prepared at all or are poorly prepared. Lack of accounts is also an indication of possible misappropriation of funds
- Delay or difficulty in availing documents or absence of documents could imply possibility of concealing possible fraud or misappropriation
- Suspense figures or figures not defined could also be a possibility of concealing wrongly applied appropriations. The presence of many of such figures or huge amounts indicated should be a cause for alarm
- When accounts are not signed by the authorized officers, it is not only a sign of lack of authenticity of the documents but also lack of ownership and responsibility.

The Committee therefore recommends that investigations be conducted for possible fraud on all the councils that failed to prepare and submit accounts for audit or where accounts were not signed or had suspense figures.

1.7.2 Fixed Assets

The Committee noted that a fixed assets register (FAR) is important for purposes of control and preventing misappropriation of assets. It also keeps track of the correct value of assets, which allows for computation of depreciation and for tax and insurance purposes. The FAR generates accurate, complete and customized reports that suits the needs of management. A FAR also allows a company to keep track of fixed assets that are not under simple, direct control of the company. This means owned and leased assets, assets under construction, and imported assets.

It was observed that most Local Authorities did not maintain proper Fixed Assets Registers (FAR). Lacked ownership documents and had not valued their assets (Land, Buildings, Motor Vehicles and other immovable assets)

The absence of a FAR means that the assets are therefore susceptible to theft and any other form of loss without the knowledge or record of the council

The Committee recommends that all local authorities should prepare proper fixed assets registers identifying all their properties, acquire ownership documents and value all their assets. The fixed assets register should be adopted by the full council so as to ensure that all the assets are captured in the FAR. The transitional authority should ensure that all council assets are included in the FAR in preparation for transition to County Governance

The Committee additionally recommends a financial census to be conducted by the Auditor General to establish the actual position of councils' assets, including their properties, buildings, lands etc. Professionals, that is, in the council and outside (the auditors and external valuers), and members of the public should review the council's fixed assets register identifying all its properties; and physically verify their existence and status.

The Committee noted that despite some serious irregularities, the Ministry just transferred the chief officers concerned without ascertaining their culpability in a number of these cases of misuse and misappropriation of government property

The Committee therefore recommends that the officers responsible for the abuse, irregular acquisition or irregular use of government assets should be investigated and disciplined. In addition, any assets established to have been obtained through fraudulent means should be recovered and restored to the public

1.7.3 Renewals Funds

The Local Government Act, Cap 265 Section 219 requires local authorities to create and set aside adequate Renewals Funds to provide for the entire or partial replacement of some or all assets. Since inception, no Renewals Funds were created and set aside by all the councils in breach of the law. Most councils have created or promised to create the Renewals Funds and adhere to the law.

The Committee recommends that all councils should create and operate a renewals funds account for purpose of replacing their assets.

1.7.4 Cash & Bank Balances

The City Councils did not constitute boards of survey to ascertain cash on hand and other cash equivalents. In addition, bank statements and monthly bank reconciliation statements were not prepared (bank certificates were not available), and where they were prepared, there were delays or were not done on a regular basis. Most local authorities failed to bank their revenue intact as required by financial regulations.

The Committee therefore recommends that the Chief Officers should review all reconciliation and bank statements on a regular basis, monthly or weekly so as to keep track of revenues, and seal any loopholes.

The Committee recommends that officers under whose tenure revenue was not banked intact and could not be accounted for should be surcharged or the Ministry of Local Government should institute measures to recover such funds. All such cases should be investigated by the relevant authorities to ensure that any guilty parties are caught and punished accordingly. The Committee further recommends that officers found culpable of misappropriation should not hold public office conferred by the Republic of Kenya.

1.7.5 Debtors & Prepayments

Debtors' ledgers, debtors' schedules, control accounts and other related analyses were not properly or adequately maintained. The failure to prepare such primary records created avenues for abuse and misappropriation of public resources.

The Committee recommends that internal controls should adequately be put in place by the Ministry of Local Government. Internal auditors of the ministry should be also assigned to councils to oversee internal controls.

1.7.6 Creditors & Accruals

The councils were not maintaining creditors control ledger. Consequently, and in the absence of the ledger, the accuracy of Creditors and accruals could not be confirmed. The failure to maintain creditors' ledgers created avenues for misappropriation of council resources through the creation of non-existent creditors, payment of questionable debts, double payment of creditors.

The Committee recommends that internal controls should adequately be put in place by the Ministry of Local Government. Internal auditors of the Ministry should be also assigned to councils to oversee internal controls.

The Committee further recommends that the Auditor General reviews all creditors' ledgers during audit to establish their accuracy and possible occurrence of any misappropriation or abuse. In case of misappropriation and or abuse, investigations be conducted and officers found culpable surcharged and appropriate disciplinary action be instituted against them

1 7 7 Local Authorities Transfer Fund (LATF)

Most Local Authorities either directed LATF to other uses without approval failed to adhere to LATF conditionalities failed to or poorly implemented LATF projects, failed to maintaining separate books for LATF and project files, failed to adhere to procurement procedures in implementation of LATF projects

The Committee recommends that the Permanent Secretary, Ministry of Local Government should take disciplinary action against Chief Officers who fail to follow financial management rules relating to LATF and the public procurement and disposal laws and regulations including surcharging them for losses incurred by the local authorities for their failure to adhere to financial and public procurement laws and regulations.

The Committee recommends that all local authorities who do not meet LATF conditions should not receive LATF at all.

1 7 8 Imprest, Advances and Allowances

Imprest, advances and allowances issuance and recovery is governed by Financial Regulations. Most Chief Executive Officers of Local Authorities failed to recover imprest and advances within the stipulated period leading to accumulation debts by current and formers councilors and employees for many years.

The Committee recommends that the Accounting Officer, Ministry of Local Government, should ensure that all debts owed to Local Authorities by current and former officers and councilors are recovered with interest as provided for under the Government Financial Management act, 2004. Any Councilors or former officers running for elective public office and still owing imprest should not be cleared for contesting in the next elections. Further, officers who still owe local authorities should not be employed by the county governments.

The Committee also recommends that information on outstanding imprest defaulters be forwarded by the Permanent Secretary, Ministry of Local Government to the Independent Electoral and Boundaries Commission (IEBC)

and the Registrar of Political Parties to ensure that any councilor or former officer running for elective office is sufficiently cleared to contest for an elective office.

1.7.9 Irregular Procurement/Financial Improprieties

Poor or weak internal systems led to abuse of the manual records kept, and misappropriation of public funds. The officers responsible for these improprieties did not adhere to proper financial management regulations as well as public procurement and disposal procedures and regulations leading to expenditures without supporting documents, single sourcing of services. The Chief Officers were directly involved in the payment of non-existent services, payment without adequate documentation, issuance of allowances, advances without following laid down financial procedures and regulations.

The Committee therefore recommends that all officers found to be involved in misappropriation of council funds should be investigated, charged and barred from holding any public office. Additionally, any councilors found liable or guilty of such collusion and abuse of office should be barred from holding public office.

The Committee also recommends that all procurements by councils be investigated and any suppliers or contractors found guilty of colluding with chief officers or other council or Ministry officials should be barred from obtaining contracts with councils or government departments, and county governments in future.

1.7.10 Obvious inaccuracies in the accounts submitted

The accounts so far submitted by the council contain obvious inaccuracies, implying sheer negligence, incompetence or inefficiency in the part of the officers preparing or supervising the work.

The Committee recommends that:-

- Owing to the serious anomalies noted in the council, there is urgent need to strengthen systems of financial management and reporting by the Chief Officers, failure to which disciplinary action be instituted by the Ministry of Local Government.

- Chief Officers, who fail to avail documents for audit verification at the time of audit without good cause, should be barred from holding public office conferred by the Republic of Kenya

1.7.11 Non-response to audit queries

The Committee observed that most of the councils did not regard the auditors seriously. There was an in-bred culture of impunity that caused the officers to delay or not respond to queries raised. Even in the sittings held with the councils, a large number were sent back to prepare their responses afresh due to non-consultation with the auditors, leading to low quality or inadequate responses. Some councils were still providing their responses to audit queries on the day of the meeting instead of 5 days in advance as required.

The Committee observed that there was generally a lack of commitment by councils in responding to audit queries. Councils were all in agreement with the queries raised, but took little or no corrective action to rectify these matters. The chief officers did not all acquaint themselves with the law regarding submission of responses. Additionally, many of the chief officers did not understand the audit report, and thus could not respond to it. This was contrary to their conduct in their respective professional bodies, for example, Law Society of Kenya (LSK), Institute of Certified Public Accountants of Kenya (ICPAK), Institute of Certified Public Secretaries of Kenya (ICPSK), among others, chief officers must be qualified professionals.

Further, since the Ministry of Local government did not pursue or follow-up on adherence to the law, councils got the impression that it was not necessary to follow the law.

The Committee recommends that the Ministry of Local Government should take disciplinary action against all officers who did not comply with the requirements of the Audit Act and the Local Government Act, Cap 265. This action should include Ministry officials in the Local Authorities Inspectorate or other departments who were lax in performance of their supervisory role over the councils. Such neglect led to mismanagement in the councils.

Finally, the Auditor General should seek to ensure that his office has sufficient capacity to deal with errant officers and enforce the law.

1.8 GENERAL OBSERVATIONS AND RECOMMENDATIONS

From the evidence taken, the Committee made the following general observations and recommendations

1.8.1 Inadequate preparation and failure to provide responses to audit queries
Some executive officers of the City Councils were inadequately prepared to respond to audit queries and issues raised during appearance before the Committee, making the committee to send them away and re-appear when prepared. Some executive officers produced responses on the day of the sitting without reasonable cause while others could not produce supporting documentary evidence to their responses. This interfered with the Committee's tight program and inconvenienced members and the office of the Auditor General in addition to the Council's incurring extra money for the second appearance.

In this regard the Committee recommends that:-

- (i) The Chief Officers of the City Councils should ensure that they are adequately prepared for meetings, responses and supporting documents are submitted within the time recommended
- (ii) The Chief Officers who attend Committee meetings unprepared or fail to provide responses and supporting documents in time should be surcharged with the view of recovering imprest issued to attend Committee meetings.

1.8.2 Non-availability of documents for audit verification

Many Chief Officers failed to provide explanations, do reconciliations and provide or avail documents to the Auditor General for verification at the time of audit leading to audit queries that would otherwise have been resolved were the explanations, reconciliations and documents availed. The Committee noted that such failure to produce documents could lead to concealment of

possible fraud. The habit amounts to breach of the government financial regulations & procedures and the law.

In this regard the Committee recommends that in future,

- (i) The Chief Officers, of Local Authorities, who fail to avail documents for audit verification at the time of audit without good cause should be barred from holding public office conferred by the Republic of Kenya.
- (ii) Responding to and reducing audit queries should be one of the benchmarks in performance contracting for Local Authorities.

1.8.3 Culture of financial impunity and lack of fiscal discipline

The Committee observed that Chief Officers in City Councils repeatedly committed financial irregularities with the comfort that they will get away with it due to the frequent transfers in local authorities. The Chief Officers either willfully or negligently failed to enforce and comply with government financial regulations and procedures relating to budgetary controls and imprest surrender culminating in over expenditure without the necessary ministerial approval and accumulation of huge outstanding imprest. Some Chief Officers sought retrospective ministerial approval in case of over expenditure.

The Committee recommends that -

- (i) Chief Officers should ensure that the Local Authorities that they manage exercise prudent fiscal management.
- (ii) Chief Officers who fail to comply with government financial regulations and procedures should be surcharged for the money over spent by the council without approval and for the imprest not surrendered and or accounted for within the stipulated period.

1.8.4 Value for money audit

The Committee observed that the quality of works, goods and services procured by the City Councils were at times unsatisfactory despite the fact that Chief Officers had expended money as per the government financial regulations. The Kenya National Audit Office only undertakes financial audit as opposed to carrying out both financial audit and value for money audit on expenditure.

The Committee recommends that the Auditor General in addition to undertaking financial audit on expenditure of City Councils should further carry out value for money audits.

1.8.5 Debts by Local Authorities

According to the Permanent Secretary, Ministry of Local Government, the City Councils had statutory debts, sundry debts and loans owed to financial institutions. The Committee observed that other than the approval by the Minister for a certain threshold of loans, there lacked proper control mechanism to guide borrowing by the city councils, and ensure that funds acquired through loans are utilized prudently for the intended purpose. Further, there were no mechanism to enforce compliance in the repayment of such loans leading to accumulation of debts and accrued interest by the city councils. The three city councils lacked proper records to support some loans owed due to poor record keeping. The Committee further observed that the high level of indebtedness by the city councils has constrained the provision of quality services to citizens and would hamper and constrain the development agenda of County Governments.

The Committee recommends that the Ministry of Local Government and the Transition Authority should move with speed to rationalize all debts owed by various the city councils with a view to settling them before the transition to County Governments.

1.8.6 Contribution in Lieu of Rates and Way Leaves

The Committee observed that the lump sum annual allocation of Kshs. 500 million by Treasury to the Ministry of Local Government as Contribution in Lieu of Rates (CILOR) was inadequate to cover the amount of CILOR owed to Local Authorities. There is lack of a clear policy on the disbursement of CILOR to Local Authorities the city council in particular lacked documentation on the amount of CILOR owed and therefore making payment of CILOR difficult.

The Committee recommends that -

- (i) The City Councils should provide all necessary documentation to support their claims to Government for CILOR and Way Leaves.
- (ii) The Ministry of Local Government should develop a clear policy on the disbursement of CILOR funds.
- (iii) Each Government Ministry should factor in its recurrent expenditure budget CILOR owed to the City Councils and the money paid directly to the respective Local Authority.
- (iv) The Government should clear all outstanding CILOR owed to Local Authorities to enable them clear other debts in preparation for County Governance.

1.8.9 Lack of accounts

The Committee observed that the City Councils have not kept proper books of accounts since inception. There were no books of prime entry i.e. cash books, expenditure, revenue, bank balances, creditors and debtors, meaning that there were no trial balances and therefore no audited accounts. This situation contributed to production of abstracts of accounts which could not be supported and therefore could not be certified by the Auditor General.

Most major councils have lagged behind in the preparation and submission of accounts despite handling massive resources. This is an indication that financial management and accountability in these councils is wanting.

The Committee recommends that the outstanding accounts should be availed to the Auditor General in time for audit, failure to which the concerned Chief Officers should be disciplined and the relevant local authorities be denied the Local Authorities Transfer Fund (LATF) disbursements. The Committee also recommends that the LATF Act should be amended to ensure that Local Authorities only receive LATF disbursements upon production of certified audited accounts.

1 8.12 The supervisory role of the Ministry of Local Government

The Committee noted that the supervisory role of the Ministry of Local Government appeared disjointed or non-existent as regards supervision of City Council of Nairobi. The Committee's concern was whether it was a deliberate move by the Ministry to put in place improper systems. The Committee observed that there was a disconnect and lack of coordination between the Ministry Headquarters and the City Councils and particularly the City Council of Nairobi in project implementation, preparation for meetings and response to issues raised in the Committee on audit queries. This could only be interpreted that the disjointed supervisory and coordination role was deliberately designed to affect projects implementation and act as conduit for siphoning funds or that the Ministry was not in full control of the city councils.

The Committee observed that the Accounting Officer, Ministry of Local Government failed to perform his duties as provided under the provisions of the Public Finance Management Act, 2012. The Committee therefore recommends that the Minister for Local Government should ensure that proper

systems of supervision, reporting and accountability are put in place without further delay for prudent management of Local Authorities

1.8.16 Imprest and advances

The Committee observed that the Chief Officers issued imprest and advances and failed to recover the allowances/imprest from councilors and staff contrary to financial management regulations and in contravention of the provisions of the Public Finance Management Act, 2012. The Committee therefore recommends that all the imprest and advances/allowances not surrendered and or recovered should be recovered by the Accounting Officer, Ministry of Local Government from the concerned officers with interest as provided for under Section 71 (4) of the Public Finance Management Act, 2012 prior to transition to County Governance.

1.9 ADOPTION

Mr. Speaker Sir,

All the recommendations contained in this report were arrived at by consensus and after exhaustive and constructive deliberations, taking due regard to ensure that there is adequate machinery within the Public Service to implement these recommendations. The Committee urges the House to adopt the recommendations.

1.10. APPRECIATION

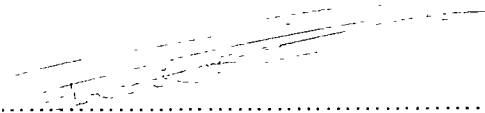
Mr. Speaker Sir,

The Committee would like to thank the Permanent Secretary, Ministry of Local Government, Permanent Secretary Ministry of Lands, Permanent Secretary, Permanent Secretary, Ministry of Finance for their cooperation.

The Committee would also wish to thank all the Chief Officers of the City Councils who appeared before it and provided valuable insights on the issues raised.

Finally Mr. Speaker Sir, the Committee further wishes to thank you and the Clerk of the National Assembly for facilitating its work. The Committee also wishes to record its appreciation for the exemplary services rendered by the officers from the Kenya National Audit Office and the Office of the Clerk of the National Assembly. Indeed, their cooperation and commitment to duty has made the work of the Committee and production of this report possible.

SIGNED:

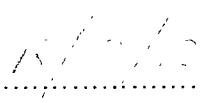


HON. THOMAS L. MWADEGHU, MP

CHAIRPERSON

LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE

DATE :



2.0 BACKGROUND TO GOVERNANCE IN KENYA'S THREE CITIES (CITY COUNCIL OF NAIROBI, CITY COUNCIL OF MOMBASA AND CITY COUNCIL OF KISUMU)

The Local Authorities have been operating under the Local Government Act, Cap 265, Laws of Kenya. However, with the promulgation of the new Constitution in 2010, which brought in the principle of devolution, there emerged the need to restructure the operations of local authorities. As a result, sections of Cap 265 will be repealed, and the Urban Areas and Cities Act, 2011 will be in force in their stead. In addition, the Local Authorities will be restructured to align with the forty-seven counties formed under the new Constitution. It is not clear yet, from the Ministry of Local Government, in what form this structure will be. However, the Transition Authority has been conducting tours around the country to review the infrastructure and assets available for county governments, and will most likely advise on the same.

One immediate change that took place was the elevation of the Municipal Council of Mombasa and Municipal Council of Kisumu to City Councils, as per the requirements of the Urban Areas and Cities Act, 2011. It should be noted that Mombasa and Kisumu were already classified as cities before the enactment of the new Constitution. These councils will therefore be referred to by their new names.

The City Council of Nairobi, City Council of Mombasa and City Council of Kisumu are the biggest councils in the country. However, they have been beset by the same problems as the rest of the local authorities, that is, mismanagement of funds, poor record-keeping, lack of accounts, laxity of staff, and numerous other operational challenges.

Local Authorities in Kenya are mandated to provide a wide spectrum of services to the public that not only directly impact on good governance and

service delivery at the local level, but also have the ability to effectively target the disadvantaged groups within the society with pro-poor interventions, whilst ensuring implementation of the Millennium Development Goals, and Kenya Vision 2030. The local authorities provide social services not for profit.

The legislation governing local authority function is the Local Government Act (LGA). The Act and its subsequent amendments provide for administrative and legal powers, functions and responsibilities of local authorities. It also provides for sources of revenue to finance the council's functions. Local authorities collect revenue from internal sources consisting of a variety of taxes, fees and charges. They further receive resources from the central government through the Local Authorities Transfer Fund (LATF), which has been operational since the 1999/2000 Fiscal Year. The services provided by local authorities include the maintenance of access roads, the establishment and maintenance of public markets and bus parks, as well as the maintenance of housing and social welfare programs.

3.0 CITY COUNCIL OF NAIROBI

The Nairobi City Council is the local authority governing the City of Nairobi. It is the largest of the 175 local Authorities in the country and is under direction of the Ministry of Local Government.

In 1963, after Kenya achieved independence, the Nairobi Urban District Council (NUDC or simply UDC), was transformed to the City Council of Nairobi (CCN). The Council was created by an act of Parliament, Cap 265 of the Laws of Kenya to provide services to residents of the city. Other functions of the Council include the provision of essential services such as public safety, housing, healthcare facilities, primary education, emergency response, waste collection, water and sanitation among other services.

The Chief Executive of the City Council is the Town Clerk and is appointed by the Minister of Local Government. The Non-executive branch of the Council is headed by the Mayor. The Town Clerk oversees the functions of 17 main and 4 sub-committees whose members are elected and nominated councilors. Each committee is chaired by one Councilor. The committees meet at scheduled meetings and adopt proposals by consensus. The proposals then pass through a full Council for review. Proposals can only be approved as Council Resolutions by the Minister for Local Government having been reviewed by the full Council.

The City Council of Nairobi appeared before the Committee at various times to give evidence on its certified accounts for the 2003/2004 to 2008/2009 Financial Years. The Committee however noted that the Council has had a history of not providing documents for audit to the Auditor-General, so certifying the books of accounts has been difficult and delayed. The Council has not had a good history of responding to issues raised by the auditors.

through management letters, draft and final reports, nor did it avail its chief officials for exit meetings.

The following are some of the major queries covered in these meetings:

3.1.1 Accuracy of the Financial Statements

The auditors captured the following issues in the Council's accounts for the years 2003/2004 to 2008/2009:

- (i) The Management prepared its books without using double entry accounting system to enable generation of a proper General ledger and Trial Balance.
- (ii) Fixed assets were not classified in accordance with the Council's accounting Manual or by the nature of the asset.
- (iii) Key supporting documents missing or not produced during the audit resulting in limitations of scope.
- (iv) Comparative figures did not tally with previous years audited accounts.
- (v) The statements were materially in error and the Council did not process the proposed audit adjustments and actual amended accounts not produced.
- (vi) In 2008/09 the Management did not explain the inconsistency noted in the figure reported of LATF in the Financial Statements. The Statement of Financial Performance, the Cash Flow Statement and Note 20 to the Financial Statements reflected figures of Kshs 1,729,446,000, Kshs. 1,708,692,000 and Kshs 1,704,250,000 respectively.

The Council explained that the accounts for the two years ended 30 June 2006 were not properly prepared to enable the generation of proper trial balance and General Ledger. The Council used the Simplified Accounting System which was being used by Local Authorities at that time and it lacked

basic accounting concepts such as the double entry. However, currently all primary books of accounts were being maintained. The Council has also automated its financial operations through LAIFOMS (Local Authorities Information Financial and Operations Management System) thereby improving the accuracy of the financial records.

The Council further explained that records for its fixed assets were maintained from the points where they are managed. For example, Lands and Buildings records were maintained by the Chief Valuer, and Motor vehicles by the City Engineer. Other movable assets were maintained at departmental level. No central asset management point was established at the time. At present, as part of the revaluation process, the Council is in the process of consolidating all the fragmented asset registers into one register by procuring an asset management system, asset coding and revaluation which are part of the terms of reference of the consultancy.

There was an incidence of missing documentation due to poor record keeping and poor filing systems. In addition, preparation of the accounts for the years 2003-2008 was done in a crash programme in order to update the Council's audit position. Adjustments and reconciliations were still underway to ascertain the correct position of the audited accounts and make the necessary adjustments.

The suspense item of Kshs 343,355,000.00 included in the debtors' figure was occasioned by un-reconciled water customer accounts and water debtors control account. This was subsequently reconciled by the water company which is an independent company since 2004. Currently the said suspense is no longer in the accounts.

The suspense item of Kshs 2,612,829,000.00 included in the Creditors balance as an adjustment of LATF receipts are LATF funds received from the prior years which had not been captured as receipts in those years. Money was received and spent without making proper entries in the financial records thereby necessitating the above adjustment.

On the inconsistent LATF figures in the financial statements of 2008/2009, the Committee was informed that LATF returns were submitted late, which late to the Council being charged penalties of Kshs 20 million. This resulted in the Council receiving Kshs 1.704 billion instead of Kshs 1.708 billion in LATF. In addition, this penalty was not disclosed in the financial statements.

The Committee was concerned about the accuracy of the financial statements, as other figures may not have been disclosed as well, and other penalties may have been incurred by the Council delaying in forwarding of documents or making required payments. The Committee therefore recommends that the then Chief Officers must be held responsible for this oversight and loss of funds to the Council.

The Committee observed that the Council was not cooperative with the auditors, especially in producing relevant supporting documentation for various queries raised. Multiple times during the Committee's meetings with the Council, responses to the issues raised were provided on the day of the meeting, thus not providing the auditors sufficient time to confirm the veracity of the information provided.

The Committee abhorred this disregard of the Auditor General by the Council, including non-response to issues raised by the auditors through management letters, draft and final reports, nor did it avail its chief officials for exit meetings. The Committee was concerned that that lack of records and delayed provision of information could have signified falsifying of information to satisfy

the auditors and legal requirements. This lack of documentation could also have been an avenue for misappropriation of public funds.

The Committee therefore recommends that investigations be done by the relevant authorities into the Council's accounts to determine if any misappropriation is prevalent in the inconsistencies noted in the accounts. Anyone found culpable of any illegalities should be prosecuted and disciplined.

The Committee heard that the Treasurer's department consists of the following sections: Rates, Accounts, Revenue, Single Business Permit, Carparks, Accounting, Documents & Administration. The Technical Department, which is a standalone section, handles issues of the Fixed Assets Register.

The Committee recommends that the Council should review the structure of the Treasurer's Department so as to cover the key issues of the Council, especially those affecting the preparation and accuracy of the accounts, and proper record-keeping. The Treasurer should closely monitor the output of the staff in these sections.

The Committee further recommends that due to the seriousness of the issues, accurate accounting should be a key performance indicator in any performance contracting done in the future, including in the counties.

3.1.2 Going Concern

Between 2004/2005 and 2008/2009, per the audit, the Council operated on a negative working capital, hence threatening its sustainability.

The Council explained that this was as a result of the financial statements being based on undervalued assets. This undervaluation coupled with inclusion of loans which were guaranteed by the Government for development

of Water infrastructure but which could not generate enough funds to pay off the loans, significantly contributing to the seemingly insolvent status.

Currently, the Council is in the process of undertaking a revaluation of its assets to establish their fair market values and therefore adjust the books accordingly. The World Bank through the KMP (Kenya Municipal Program) has already advertised for a consultant to undertake an Asset valuation exercise for the council. In addition, communications with the Ministry of Local Government are underway to engage other relevant ministries and agencies to have the Water Loans liability transferred from the Council because the Council is not enjoying financial benefits of the assets acquired from the loan.

The Committee also heard that the Council did not have a policy in place for settlement of bad debts and collections, but had engaged a financial consultant to assist in setting up a financial policy for management of debts and collections.

The Committee therefore recommends that the Council consider using a geographical information system (GIS) and electronic payment system to aid in identifying and billing all Council properties for better efficiency in operations and collections.

3.1.3 Non-Current Assets

The auditor noted some of the following issues regarding assets -

- (i) The Council did not maintain a Fixed Assets Register (FAR).
- (ii) The Council does not have ownership documents for its assets.
- (iii) In the list of Council title documents are a number of unsurveyed properties.

The Council explained that preparation of a fixed assets register was difficult due to lack of funding to do the asset valuation.

The Committee observed that the valuation could be done in two parts: non-movable versus movable assets, since some assets were known and not difficult or expensive to value.

The Committee therefore recommends that the Council engage professional assessors as soon as possible to value movable assets, like vehicles, furniture etc. The Council should then engage a consultant for the more complex valuation process for its land and buildings.

3.1.4 Unremitted Rates Collected by Lawyers

The auditors noted that debtors may have been irregularly written off. It was also not possible to ascertain the amount of debts collected via lawyers.

The Council confirmed that it was not possible to ascertain the amount collected by Lawyers and not remitted. The Council has currently formed a reconciliation team to ascertain the amount collected by lawyers and the rates accounts which were handled by the lawyers.

The Committee noted with concern that there was no procedure for following up on status of collections once a case was forwarded to the lawyers. This could be an avenue for council staff and lawyers to collude and misappropriate public funds.

The Committee therefore recommends that a mechanism or measures should be put in place to track the collections done by the lawyers. In addition, all records should be reconciled as soon as possible to ensure the Council receives the monies due to it. Investigations should be conducted to verify if

any funds have been channeled elsewhere. If any officer or lawyer is found culpable of misappropriation of public funds, they should be disciplined.

3.1.5 General Fund Rates Billing and Income

The auditors noted the following issue under this query:

- (i) The Council did not maintain adequate records in respect of Rates Income.
- (ii) Valuation Roll has not been revised comprehensively for over thirty (30) years. Only piecemeal revisions have been done.
- (iii) Revised rates not effected resulting to large areas of land in the City being alienated and thus subject to adjudication for purposes of rating though not incorporated in records.

The Committee was informed that in regards to the Annual Rates Records, the Council maintained computerized rates records during the audit period. However, not all ratable properties had been captured into the system, as the computerization level was currently at 60%. The system calculates annual rates payable, interests, refunds and prepayments of all computerized accounts. The Council is currently in the process of partnering with the Kenya Revenue Authority in order to establish a linkage with the Lands office to enable the Council bring on board the un-captured 40% ratable properties.

The Committee also heard that with regard to the alienated land, the Council's ratable properties are registered at the lands office and notified to the Council by the owners. Where sub-divisions have taken place and the titles have not been issued or issued but not presented to the council, rates continues to accrue to the mother title. Upon presentation of the titles for rating the properties are rated from the date of registration. Therefore no loss of revenue is incurred by the council.

The Committee noted that the Council needed to improve its efficiency in processes and systems, and recommends that the Council use more information technology to better its services to the people at a cheaper cost

The Committee was also informed that the process of valuation of the assets was in progress, and valuation is scheduled to begin in January 2013 and recommends that the Council ensure this is completed as soon as possible

The Committee was informed that there were currently only two (2) registered valuers in the Council, and recommends that the Ministry post more to the Council given the scope of the work involved. Alternatively, valuers can be seconded from the Ministry of Lands to assist the Council's Chief Valuer to finalize on the matter of the valuation roll.

3.1.6 Cash and Cash Equivalents

The auditors noted that

- (i) The Council did not properly maintain the Cash Books to enable accurate preparation of Bank Reconciliation Statements
- (ii) Unpresented cheques and other reconciling items were not explained
- (iii) Substantial amounts of cash collected was not banked, but used as JOLs advances, salaries and other cash encashments. These transactions were not processed appropriately

The Council explained that cash books were not prepared or maintained due to lack of supervision in the past, despite having fifty two (52) qualified accountants in its employ. The City Council is currently maintaining its cash book

The Committee recommends that the Council ensure all transactions are posted daily, and the books are balanced at the end of the day, just like commercial

banks do. The Council should also enhance its use of technology to improve revenue collection and tracking, and updating of its records in line with bank records.

The Committee abhorred the laxity of the officers in the Council in maintaining its records despite being sufficient in number. Lack of reconciliation of cash books and cash not being banked could have been purposely done to allow for misappropriation or misallocation of council funds.

The Committee therefore recommends that investigations be conducted by the relevant authorities, including the Ethics and Anti-Corruption Commission (EACC), to establish if any incidence of corrupt practices has occurred. Individuals found guilty of misconduct should be charged. In addition, any monies owed to the Council, including through IOUs, advances etc, should be returned with immediate effect, failure to which, officers involved should be surcharged and face appropriate disciplinary action.

3.1.7 Net Debtors/Receivables

The Committee heard that debtors increased by each financial year due to an increase in defaulters and corresponding interest accrued. In 2008/2009, property rate debtors amounted to Kshs 10,802,842,000 which was 82% of the gross debtors of Kshs 13,213,533,000 that has accumulated over time. The Management did not show any effort to reduce the outstanding debts.

The Council concurred and informed the Committee that collection of rates from perennial defaulters is a lengthy and complex process which involves litigations in court. However, the Council stated they had taken very aggressive measures to recover some of the debts from the debtors including taking rates defaulters to court, although such a process is very long.

The Council is currently in the process of partnering with the Kenya Revenue Authority with among other objectives establish a linkage with the lands office in order to bring on board the un-captured ratable properties. On the same the Council has already signed a memorandum with the Credit Reference Bureau to have all its debtors listed and assist in the debt collection. These efforts are geared towards reducing the default level.

The Committee noted with concern that the Council was borrowing money elsewhere, for example, the Kshs. 5 billion from Equity Bank, yet it had outstanding money owed to it of Kshs 13 billion that was not being collected.

The Committee concluded that to improve its operations, the City Council needs to collect cash from all its debtors, and manage its creditors so as to control cash flow. The Committee therefore recommends setting targets for employees in the rates departments to motivate them and maximize collections.

3.1.8 Payables/Creditors, Accruals & Provisions

The auditors noted among other things that

- (i) The Council's management did not provide the relevant supporting documents including the ledger, other necessary documentation and records for audit verification.
- (ii) No provision for penalty was made in the accounts over statutory deductions.

The Committee heard that the Council did not have a creditor's physical ledger book for sundry creditors at the time of audit. However, all the unpaid invoices at the end of every financial year and the un-presented cheques formed the creditors. Currently, creditors are generated from the financial system in use, LAIFOMS which has integrated the procurement and payment process from issuance of LPO to cheque generation.

The Committee was also informed that during the period, provision for possible penalties was not made. Currently, all statutory deductions are paid as they fall due and therefore no penalties are being accrued. The Council had entered into agreements with all statutory bodies on how to pay off the old debts and penalties, and has currently cleared most of her statutory creditors.

The Committee noted the challenges encountered by the Council in keeping track of its creditors, and recommends that the Council review its structure to ensure all key sections (especially those queried by the auditors) are well-covered, that is, having separate people in charge of Debtors, Creditors, Cash etc.

3.1.9 Parking Fees Revenue

The auditors noted the following

- (i) In 2003/2004, the revenue reflected in the General Fund Revenue Summary stood at Kshs 179,285,000 while an analysis provided by the Council indicated actual fees revenue totaled Kshs 263,700,000.
- (ii) In 2004/2005 and 2005/2006, under "Car and Bus Parking Fees", it was observed that the tabulation records reflected revenue collections amounting to Kshs 438,698,653 for the period ended 30 June 2005, while the accounts reflected a figure of Kshs 182,723,000 as per the Council's Cash Office records.

The Council stated that these differences were caused by mispostings, discrepancies and other reconciliation processes. The Committee observed that this could have been an avenue for concealing misappropriation or abuse of public funds.

The Committee therefore recommends that parking fees collections be carried out electronically or with an automated system to reduce incidences of

pilferage found in the manual system, and ensure better efficiency at lower cost

OTHER FINANCIAL RELATED ISSUES AT THE CITY COUNCIL

3.2 BANKING FACILITY OF KSHS 5 BILLION FROM EQUITY BANK LIMITED

On 30 March 2011 the Council signed an agreement for a banking facility with Equity Bank Limited for Kshs. 5 Billion repayable in sixty (60) months

10% interest was to be paid monthly on drawn balances, but subject to revision at the sole discretion of the bank.

Principal repayments of Kshs. 333,333,334 were payable in March, June and November each year and amounted to Kshs. 1,000,666,668 as at 30 October 2012

Security

1. The Council was to make a standing order of Kshs. 2 Million build up to meet the interest payment at the end of each month which may be reviewed as the outstanding loan balance reduces
2. All expected LATF funds for the year 2010/11 of Kshs. 2.3 Billion were to be transferred from the Cooperative Bank to Equity Bank and all future LATF funds to be rerouted through the bank.
3. Land rates, Single Business Permits, Advertisements and Billboards, Parking and Rent were to be moved to Equity Bank.
4. Daily cash build up of Kshs. 1 Million from daily collections received placed in an Escrow A/c (maximum Kshs. 500 Million) to form part of the security which shall also be used as security for any temporary working capital requirement, and

5. A specific debenture created by the borrower over all the receivables and securing a maximum principal amount of up to Kshs. 5 Billion

Findings

1. The Council provided two approval letters for the loan for audit verification, one Ref MLG/399-01/V (54) dated 11 February 2011 signed by a Mr. Karanja for the PS and another signed by the Minister on 01 April 2011 while the agreement had been signed on 30 March 2011. The bank confirmed that the approval of 01 April 2011 was the one they used. Therefore, the loan was signed before Minister's approval, which was in contravention of Section 222, Cap 265.
2. The bank explained the reason why it appears that the loan was advanced before registration of the Charge documents. They indicated that the Letter of Offer is the loan agreement upon acceptance by the Council. As regards the charge over rates and revenue and charge over cash deposit in a collection account, they were dated on 23 June 2011 and registered on 19 July 2011. This was normal practice between execution by the various parties, stamping and registration.
3. The Council did not provide the original contract agreement for verification, it had to be gotten from the bank.
 - (i) Verification of bank statements revealed that the loan was disbursed piecemeal in Account No. 0810597205486 operated between 01 April 2011 to 19 November 2011, and
 - (ii) Account No. 0810598371213 operated from 19 November to date

The bank clarified that in order to save CCN cost it initially disbursed only Kshs. 3 Billion. When CCN requested for the disbursement of the

Kshs. 2 Billion after the Forensic Debt Audit, the bank disbursed the Kshs. 5 Billion and paid off the loan of Kshs. 3 Billion in order to have CCN run one loan account with the bank.

4. From the documents, it appears the facility was not a loan but an overdraft since the amount was released in piecemeal and any undisbursed amount was to be cancelled. Further observation was that the loan was to be released on availability of funds.

However, the bank on 26 November 2012, explained that the purpose of the facility was to finance the functions of the Council which was the borrower. On page 15 of the facility letter, it states that the facility was a term loan. Equity explained that it disbursed the money in tranches so as to be in compliance with the letter received from the Minister dated 01 April 2011 approving the loan. The loan was to be utilized to pay off the Council's statutory creditors including LAP Trust and LAP Fund, and all other creditors were to be subjected to a Forensic Debt Audit.

5. As at 30 October 2012, total interest paid amounted to Kshs. 876,271,951 which varied from 10% to 24%, far above the 10% which the decision to borrow was based on. Had the information on the big variation been disclosed and assessed, the Council would probably have looked for a cheaper and more favorable financier. However, the bank explained that the Council was initially offered at 10% which was lower in the market at the time. The interest rate went up because of the macroeconomics changes in the country at the time.
6. The Council did not provide verifiable audit evidence that its Legal Office was involved and therefore the Council acted without proper legal advice.

The former Director of Legal Services, Mr. Aduma Owuor informed the Committee that he was not consulted on the loan facility and therefore did not offer any legal opinion on the matter. The matter was however handled by his then Deputy Mr. Wilberforce Wambulwa. However, subsequent evidence adduced determined that Mr. Aduma had actually reviewed the draft agreement and finally approved it, countersigning it on every page. Further, the Committee heard that the legal officer is the custodian of all documents except titles. Mr. Aduma later admitted to having perused the drafts, but stated that he never saw the final copy of the agreement. This final draft was the one signed by the Town Clerk and Mayor, and a copy kept in the Council records.

7. The bank further explained that its standard rate of negotiation fee is 3% of the facility advanced. The 1% rate charged was negotiated between CCN and the bank. This negotiation was guided by the Central Bank of Kenya prudential guidelines which requires for general provisioning of 1% upon disbursement of loan. This explained the charge of Kshs. 50 million as negotiation fees.
8. Equity Bank indicated that the Escrow Account was not a transaction account and hence does not earn interest. The bank policy was applied and the Escrow Account was to finance the monthly interest which was and is payable monthly and to pay off salaries.

9. Loan Usage

- (i) All approved statutory payments were made except Kshs. 685,638,896 for NSSF.
- (ii) Other Creditors of Kshs. 862,093,238 were to be verified through Forensic Debt Audit before payment.

- (iii) Examination of records indicated that Kshs. 1,378,167,075 was paid to other creditors instead of the approved amount of Kshs. 802,093,238.
- (iv) Out of Kshs. 1,378,167,075 paid, an amount of Kshs. 294,464,929 were subjected to forensic audit as required but those paid were not on the list of creditors which had been sent to the Minister for approval.
- (v) The Final Report of the Forensic debt Audit conducted and submitted by Wachira Irungu & Associates dated July 2012 observed the following vital issues:
 - (a) A lot of hindrances were encountered in the course of the verification exercise as the listing initially provided for verification was subsequently changed with additional ones which broadened the scope of work. Some of the additional creditors were in respect of services which had just been rendered which changed the objective of the exercise into an internal authorization process.
 - (b) During the verification exercise a lot of interest was shown by some City Hall officials and councilors in what the consultants were doing, which interfered with work. Some of these officials were the contact persons for the verification exercise but they ended up showing preferences in certain creditors being verified for approval of payment ahead of others. While it was initially taken as a worthy guidance, it was soon realized that in some cases they had some vested interests defeating the overall objective of the Forensic Audit exercise.

(c) The Council failed to comply with Public Procurement and Disposal Act 2005 and Public Procurement and Disposal Regulations 2006. In some instances, the market prices and the tender prices were too wide to justify the award of tender. The City Council was buying goods and services at exaggerated prices due to lack of strict procedures and non-adherence to procurement laws. For example, Cami Contractors Limited supplied water tanks whose prices were ten times higher than the market prices and were also of lower capacity than had been ordered.

(d) Some creditors were paid in total disregard to the objection of the forensic audit team and the council's laid-down creditors verification.

The Committee observed the following:-

- (i) That the Council secured a loan of Kshs 5 Billion to pay statutory and sundry creditors. The sundry creditors were to be subjected to forensic debt audit before payment.
- (ii) The Council was not in possession of crucial loan documents, such as, contract agreement, and charge documents.
- (iii) Chief Officers of the Council were not willing to take responsibility for having executed the agreement.
- (iv) The Escrow account in use for this facility did not accrue interest, in spite of the bank charging high interest rates on the loan.
- (v) Failure by the Council to provide information and documentation was an effort to frustrate the work of the Committee.
- (vi) A large portion of the money was released on the same day the agreement was signed, before receipt of ministerial approval for the loan.

- (vi) There may have been collusion between the bank and council officials to exceed the stipulated Kshs 500 million in the escrow account as per the agreement. This put the Council at a disadvantage as it was earning no interest on its money, but the bank had additional funds to use for its operations at no cost.
- (vii) City Council commissioned Wachira Irungu & Associates to conduct a forensic debt audit for sundry creditors. A total of Kshs 2,433,067,465 worth of creditors had been verified and approved for payment but only Kshs. 1,288,205,759 had been paid by April, 2012.
- (ix) Senior council employees and civic leaders interfered with the work of the forensic auditors.

The Committee therefore recommends that:-

- (i) EACC carry out investigations into the financial management of the Council, including the procurement and utilization of the Kshs. 5 Billion loan
- (ii) The Council should, in future, seek financial advice on negotiations with regard to securing loans.
- (iii) Investigations should be carried out on the conduct of the officials under whose tenure the loan was secured and payments made
- (iv) Disciplinary action be taken on the officers who flouted financial regulations by conducting this transaction without proper approval in place
- (v) Equity Bank should pay the City Council of Nairobi interest earned on the escrow account, that is, for any balance that went over Kshs 500 million as stipulated in the agreement.

3.3 VERIFICATION OF PAYMENTS ON PENDING BILLS FUNDED BY THE KENYA URBAN ROADS AUTHORITY (KURA) TO THE COUNCIL AMOUNTING TO KSHS 404 MILLION

Background Information

Reforms in the Road Sub-Sector led to the enactment of the Kenya Roads Act, 2007, which designated four (4) road agencies to implement road works under their respective categories of the road network as outlined in the Act.

These road agencies are Kenya National Highways Authority (KeNHA) to maintain and develop class A, B and C Road network, Kenya Rural Roads Authority (KeRRA) to maintain and develop the rural road network, Kenya Urban Roads Authority (KURA) to maintain and develop the urban road network and Kenya Wildlife Service (KWS) to maintain and develop park and game reserve roads.

In FY 2009/10 the new road agencies became operational and started implementing road works designated to them under the Roads Act. As a result KURA took over the responsibility of management, development, rehabilitation and maintenance of all public roads in the city and municipalities in Kenya.

In FY 2010/11, KURA took over implementation of road works from CCN which is currently having funding constraints arising from pending bills, on-going works and other obligations that could have resulted from either underfunding and/or over-commitments.

Further, the working relationship between KURA and CCN with regard to implementation of road works within the city was not fully agreed on by then. To resolve the evolving concerns of CCN & KURA, a special Kenya Roads Board meeting held on 20 December 2010 recommended that a task force be formed to among others -

- 4 Audit all works undertaken from FY 2007/08 to date and authenticate if they have been approved by KRB and
- 4 Audit, verify and authenticate the pending bills and ongoing works to establish if they were procured within the approved work programme

Findings

A team from the Office of the Auditor General was constituted on Monday 12 March 2012 to conduct the verification exercise and came up with the following findings

1. The funds were released by KURA to CCN on 24 May 2011 and credited the following day on 25 May 2011 to the Council's bank A/c No. 0113600573604 at the Cooperative Bank of Kenya Limited City Hall branch
2. Payments amounting to Kshs. 291,907,711 were made between 27 May 2011 and 05 September 2011 towards pending bills as per the approved KURA list, leaving a balance of Kshs. 112,887,114.
3. It was noted that the balance of Kshs. 112,887,114 was utilized by the Council to pay bills which were not on KURA's approved list. However, the Council's management explained that a decision was reached to pay other bills in anticipation of reimbursing the same from funds received from other sources.
4. On 05 November 2011 and 17 November 2011 a total of Kshs. 150,813,064 was deposited by the Council in the KRB's A/c. No. 0810298080528 with Equity Bank Limited, Centre Branch
5. On 09 November 2011 payments amounting to Kshs. 112,303,716 were made from the account towards final settlement of the KURA approved bills

Conclusion

From the findings and taking into cognizance of the disbursement of funds letter by KURA Ref KURA/AAC/3/5/Vol 2 (177) dated 24 May 2011 the Council's management did not adhere to the agreed payment conditions between the Council and KURA by making payments amounting Kshs 112,887,114 towards settlement of bills outside the approved list

Committee Recommendation

Based on the above observations, the Committee recommends that the officers involved in this irregular reallocation of funds be disciplined for acting contrary to financial regulations.

The Committee also recommends that KURA and CCN should agree on the methodology for joint implementation of road-related projects to completion.

3.3 COUNCIL LAND TAKEN OVER BY MINISTRY OF STATE FOR DEFENCE LR NO 11344 DESCRIBED AS GRANT NO. L.R. NO. 19900

During interactions between the Committee and the City Council of Nairobi, the Committee was informed that the Ministry of State for Defence owes the City Council of Nairobi rates and compensation for land located in Embakasi, L.R. No 11344 described as grant No. L.R. No 19900 covering approximately 918.2 Ha.

This parcel of land was initially granted to Kayole Estates Limited by the Government on 21st February, 1964, the interest thereon being Freehold. The Council bought the said parcel of land which measured 5,639 acres less 16 acres being road reserve according to deed plan NO 80563 of 4th October 1963 from Kayole Estates Limited for valuable consideration.

The land had been used to develop site and service schemes for low income earners in Dandora Kayole Umoma among others including schemes delivered by the private sector through lease arrangement (e.g. Chaka Komarock etc)

Arrangement with the Ministry of State for Defence (MoSD)

The Department of Defence (DOD) in the 1980's entered and took occupation of part of the parcel of land and put up the Embakasi Military Garrison. Following several meetings involving DOD, Ministry of Lands and City Council of Nairobi between 1994 and 1997, the Council allocated 400Ha to the DOD on 7th November, 1997 for Defence/Military purposes.

The allotment was however subject to certain conditions among them being payment of Kshs. Forty Million (Kshs. 40,000,000.00) in Stand Premium. The DOD did not formally accept the offer nor did it pay the Stand Premium, the offer therefore lapsed at the expiry of thirty (30) days.

The DOD had breached the conditions in the letter of allotment yet they wrongfully went ahead and extended their occupation to cover approximately 918.2 Ha of the land without the consent of the Council. They then fenced off the land, thereby depriving the Council of its possession and benefit.

The Committee heard that the Council had since taken the Ministry of State for Defence to court so to recover compensation owed to it regarding the land. The amount currently stands at Kshs. 61 billion according to the Council.

The Committee was informed that the Ministry of Local Government, Ministry of State for Defence, Ministry of Finance and City Council of Nairobi held two inter-ministerial meetings in June 2012 to discuss whether the Ministry of State for Defence gave compensation for the land at the time it was taken, and whether the claim of Kshs. 61 billion was based on a valuation.

It was noted that there was no formal documentation to support the initial allocation of the Council land to the Ministry of Defence. The team resolved to have an independent valuer survey the land to determine its current worth. A valuation was also conducted on the disputed land by valuers from the Commissioner of Lands office. It was established that the land, LR No 11344 measuring 918.2 Ha (or 2268.872 acres) was valued at Kshs. 22,900,000,000 (Annex 3).

currently, a technical committee comprising of the City Council of Nairobi, Ministry of State for Defence, Attorney General, Ministry of Lands, Ministry of Finance and Ministry of Local Government (with the PS as the Secretary), has been formed to resolve this matter.

The Committee noted that there may be need to establish the legal framework to resolve the issue of government ministries/departments taking over council properties without adequate compensation.

The Committee also noted that the Ministry of State for Defence did not dispute the fact that it owed the Council money for the land and rates. The issue in dispute was the exact amount owed to the Council.

The Committee therefore recommends that the Ministry of State for Defence should compensate the City Council of Nairobi for the land as per the Government valuation and reconciliation of figures and mode of payment by the two institutions.

4.0 CITY COUNCIL OF KISUMU

Kisumu is the third largest City in Kenya and is located in Nyanza region. It has developed progressively from a railway terminus and internal port in 1901, to become the leading commercial/trading, industrial, communication and administrative centre in the Lake Victoria basin. It also serves as the communication and trading confluence for the Great Lakes region covering Tanzania, Uganda, Rwanda and Burundi.

The City Council of Kisumu's main functions include:

- (i) Mobilizing internal and external resources and, within existing regulatory framework for efficient and effective service delivery.
- (ii) Providing social services esp. water supply and sewerage services.
- (iii) Infrastructure development (roads, parking spaces, houses etc.)
- (iv) Environmental sanitation, garbage collection and disposal.
- (v) Housing, Health, Education, Welfare - Markets, recreation and Sports.

Evidence on the accounts of the City Council of Kisumu

The Committee held several meetings with the City Council of Kisumu to consider the audit reports for the Financial Years 2003/2004 to 2009/2010.

4.1.1 Format and accuracy of accounts

The Committee heard that there was a lack of maintenance of proper books of accounts which gave rise to differences in the trial balance, this in turn created an unexplained suspense account balance of Kshs. 205,840,612.00 in the four years ending on 30 June 2007. The Council explained that it had not been easy to investigate and reconcile the differences, but proper books of accounts were now in place.

The Committee also heard that prior to the financial year 2007/2008 the Council's financial statements were prepared using the Municipal Accounting System. However, from 2007/2008, International Public Sector Accounting Standards (IPSAS) were introduced in the Council in the preparation of financial statements. The Council was now in conformity with international accounting standards.

The Committee recommends that this Council and others continue to keep up with industry standards and use of information technology, including the Local Authorities Integrated Financial and Operational Management System (LAIFOMS), in the preparation and maintenance of their financial statements and accounts.

In regard to the unexplained balance in the suspense account, the Committee did direct the Auditor General to conduct a special audit into the issue to determine accuracy of this account among other. The Auditor General was still unable to receive any supporting documentation or explanation for this balance from the Council.

The Committee therefore recommends that further investigations by the EACC be conducted into this account so as to ensure that it was not used as an avenue to siphon public funds. Any officers found culpable should be disciplined.

4.1.2 Fixed Assets

The auditors reported that the Council did not maintain a fixed asset register and also did not have ownership documents for its assets.

The Council concurred with the auditors' findings and informed the Committee that it had now opened a fixed asset register which was being updated.

continuously. The Council has only managed to get ownership documents for some of its assets. The Council currently maintains its register in four categories: so as to ensure continuous updating. Plant and Machineries, Motor vehicle equipment, Land and Building, Community assets, and Furniture and fittings.

The Committee was concerned that lack of acquisition of ownership documents by the Council assets provided an opportunity for illegal reallocation or purchase of public properties for private use.

The Committee therefore recommends that the Council ensures all ownership documents are obtained as soon as possible so as to protect public assets, and be able to enable handover of a complete assets register to the incoming county government through the Transition Authority.

4.1.3 Debtors

The auditors noted that there was no maintenance of debtors' schedules and other related documents.

The Committee was informed that the Council had no schedules and registers for debtors, so historical balances used had no proper evidence. There was also no provision for bad debts due to lack of a policy. The Council now maintains the debtors' ledger, had reduced the outstanding debtors from Kshs 493,932,002 as per accounts of 30th June 2008 to Kshs 441,412,109 at 30th June 2011.

The Committee, while receiving evidence from the Council, noted questionable adjustments on the figures of debtors from the 2003/2004 to 2006/2007 audited accounts. The Committee therefore directed the Auditor General to carry out a special audit for this four-year period to establish the credibility of the source documents supporting the financial statements.

The special audit revealed that the financial statements as at 30 June 2007 for the Assets (Debtors) were understated by Kshs 563,020,710. This hinted at a possibility of secret bank accounts during the four years ended 30 June 2007 where money was being irregularly channeled for unknown purposes.

The Committee therefore recommends that relevant authorities investigate this possibility, with a view to establishing whether public funds were misappropriated instead of being deposited in Council accounts as revenue. Any officers found liable or culpable should be disciplined accordingly.

4.1.4 Sundry Creditors

The Committee heard that the Council did not reconcile creditors records and debtors schedules, because the records were manually maintained. The Council, however, later instituted the Local Authorities Integrated Financial and Operational Management System (LAIFOMS), which has enabled easy and frequent reconciliation.

As reported by Kenya National Audit Office, the Council did not have creditor ledgers and schedules to support the amount at the year end. The Council introduced creditors' ledger from the year 2008 and it is updated on a daily basis.

The Council also reduced the balance from outstanding creditors from Kshs 182,745,297.00 as per accounts of 30th June 2008 to Kshs 124,869,280.00 at 30th June 2011.

There was a debt-property swap in financial year 2010/2011 for some statutory creditors after the Ministry of Local Government approval as shown below.

Creditor	Amount Swapped (Kshs)
Laptrust	320 000,000 00
Laprofund	150 000 000 00

The Committee noted with concern that the balance in the delaying creditors' account increased from 2003 to present with no supporting documents. Balance was Kshs 1.2 billion as at February 2012. There were also no registers availed to support the balance for sundry creditors

The Committee observed that this could be an avenue for fraud providing an avenue for anyone to present a Local Purchase Order (LPO) for payment without having supplied anything as there were no mechanisms in place to verify these LPOs. Additionally, the Council did not have supporting documentation to prove what debts it owed.

Due to these questionable balances in the creditors' account for the period 2003/2004 to 2006/2007, the Committee recommended a special audit to be done by the Auditor General into the Debtors, Delaying Creditors and Suspense accounts to establish the veracity of the balances therein.

The Auditor General found that liabilities, that is, Creditors and Long Term Loans, were understated by Kshs. 457,317,836.60. This hinted at a possibility of money being irregularly channeled elsewhere for unknown purposes.

The Committee therefore recommends that relevant authorities investigate the Council accounts and determine if any there was the existence of secret bank accounts during the four years ended 30 June 2007 where money was channeled instead of going to settle Council debts. Any person found culpable of such misappropriation is to be disciplined accordingly.

The Committee recommends that all creditors' ledgers, and supporting documentation be availed to the Auditor General for verification as far as possible so as to resolve this issue conclusively

4.1.5 Cash and Bank Balances

The Council had not been doing bank reconciliations during the period under audit for its cash books and bank balances. The Council, with the implementation of LAIFOMS, is now doing reconciliations monthly. Currently the Council obtain bank balance certificates for every financial year since 2008/2009.

The Council had not been conducting the Board of Survey to verify its cash and bank balances in the years under audit review. However, with effect from the FY 2007/2008, Board of Survey has been carried out.

The Committee recommends that the Council ensure all transactions are posted daily, and the books are balanced at the end of the day, just like commercial banks do. The Council should also enhance its use of technology to improve revenue collection and tracking, and updating of its records in line with bank records.

4.1.6 Stocks and Works-in-Progress

The auditors found that the Council did not support the stores by a Store Register report or stock taking certificates.

The Council stated that it currently had a stock taking report together with the certificates as shown during the board of survey done on 30th June 2011. The value of work in-progress as at 30th June 2011 was done by the Municipal Engineer during the Board of Survey.

rd that stock-taking and record-keeping was not done
the irresponsibility of chief officers then. The Committee
officers not keeping proper records be disciplined, and that
oy information technology to improve efficiency in tracking
its works-in-progress and stocks in the stores.

ee also recommends that a work-in-progress register, not just a
, is put in place by the Council to ensure accuracy and veracity of
ords

investments

ording to the auditors, no certificates were availed to confirm and verify
council's investments in KIWASCO and Sunset Hotel

The investment of Kshs 77,518,164 in Kisumu Water and Sewerage Company
was not a cash investment but represents the value of Kisumu Water and
Sewerage Company as at that time. The actual value of investment in Kisumu
Water and Sewerage Company stands at KShs 116 000 000 as indicated in the
Financial Year 2009/2010 financial statements of KIWASCO

The Committee heard that the Council has an investment in Sunset Hotel
amounting to Kshs 500 000. In addition, the Council had never received
dividends accruing from the investment, despite having a 5% stake in the
hotel. However, the Council had no share certificate or ownership documents
to lay claim on this investment.

The Committee was informed that Sunset Hotel board of directors never
recommended payment of any dividend to shareholders due to poor
performance. In 2005/2006, 2009/2010 and 2010/2011, the hotel made losses
of Kshs 846,019, 10,408,197 and 3,745,470 respectively. As a result, the
Council has never received a dividend from this investment.

In the course of its inquiry into the issue, the committee learnt that the Kenya Tourist Development Corporation (KTDC) possesses Title No. 1178 and 1190, where the Hotel is located. It was discovered that part of the land (Lot no L.R. 1190) was illegally sub-divided and allocated to private developers, that is Peter Onyango Obado and Beatrice Okeyo in 1998. The lease in their favour was registered on June 12, 1998 and 5 days after the registration of the lease, the land was transferred to Charamit Singh Hayer, and later charged to Standard Chartered Bank for Kshs. 3 million.

KTDC wishes to amalgamate the plots and receive a single title for the same. The matter was reported to the Ethics and Anti-Corruption Commission (EACC) for investigation in 2010. Investigations are still ongoing. In addition, the Ministry of Lands, in a move to safeguard Government interest, placed restrictions against the Title in August 14, 2006 and in February 4, 2011 the Title for L.R. Kisumu Municipality Block XI/90 was revoked vide Gazette Notice No. 1272. However, the High Court, in 2012, declared the revocation of the title as null and void.

The Committee observes that the allocation of L.R. No. Kisumu Municipality Block XI/90 to Peter Onyango Obado and Beatrice Okeyo was irregular and fraudulent. The Committee also noted that KTDC never surrendered the original titles to facilitate amalgamation of the plots.

The Committee therefore recommends that:-

- (i) The Ministry of Lands pursues legal means of reversing the High Court ruling nullifying the revocation of titles and issues a consolidated title for the hotel to KTDC.
- (ii) The EACC expedites its investigations into this matter, with a view to prosecuting the perpetrators of this irregular allocation of public land. The EACC should also recover the asset.

4.1.8 Imprest Outstanding

The Committee heard that the Council's outstanding imprest stood at Kshs 27 million at 30 June 2011. Closing balances of imprest stood at Kshs 12,750,848 as at 13th March 2012. This balance further decreased to Kshs 9,142,797 as at May 2012 with recoveries having been made from the employees' payrolls.

According to the auditors' verification of these actions, imprest recoveries made through the payroll between June and September 2012 total Kshs 1,055,500.00. However, schedules of outstanding imprests with details of surrender were not provided to help verify individual balances for Mr John Sande, Arthur Gor and Ms Atieno Metabel Opiyo. In addition, the Council did not provide relevant documentation for those with nil balances.

It had been noted with concern that there were 4 officers who, as of 30 June 2011, owed over Kshs 1 million each. Two of these officers were junior staff who had been issued the imprest on behalf of the civic wing of the Council. The imprests were disbursed against procedure and were not recovered within 48 hours as stipulated by law.

The Committee recommends that:-

- (i) The Chief Officers should collect all outstanding imprest owed as soon as possible, failure to which, they should be surcharged for operating contrary to the financial regulations.
- (ii) All relevant supporting documentation for imprest recovered should be presented to the auditors as soon as possible so as to resolve this issue fully.

4.1.9 Long Term Loans

The Committee learnt that the long term liabilities agreement and the schedules of repayment could not be traced by the Council. The Council, however, provided the values of the long term liabilities totaling KSh 627,324,812 as indicated below:

Loan	Amount in Kshs
1 National Housing Corporation - [NHC]	513,391,272
2 Local Government Loan Authority	<u>113,933,540</u>
Total	<u>627,324,812</u>

The Council informed the Committee that it had plans to do a debt property-swap with NHC to clear its debt. The auditors confirmed that this long-term loan with NHC was reconciled, and the debt-swap done. All relevant documents were verified.

During the special audit conducted by the Auditor General, it was established that the Long Term Loans balances as per the audited accounts stood at Kshs. 758,105,477.00, Kshs. 658,818,795.00, Kshs. 228,803,088.00 and Kshs. 661,138,841.00 for the years ended 30 June 2004, 2005, 2006 and 2007 respectively. No related supporting documents were provided for audit review.

The accounts reflected another loan besides the one to NHC, that is, National Bank of Kenya; loan balance in the Council showed as Kshs. 14,533,284.00 while documents from the bank showed a figure of Kshs. 102,532,221.00, leading to an unexplained under-statement of Kshs. 87,998,937.00.

The Committee was concerned that no records could be traced regarding the origin of these loans, and recommends that all efforts be made to locate them.

and update the files as soon as possible. The Committee also recommends use of technology to keep and maintain records of Council transactions.

The Committee also recommends that investigations should also be conducted by the relevant authorities with a view to establishing the discrepancies in the figures and establishing whether any misappropriation took place. Necessary disciplinary action should be taken against any officers involved.

The Committee also observed with concern that the Council is currently swapping property for loans to be written-off. The Committee was opposed to this swapping, as it amounts to a loss of council assets, and recommends that the Councils liaise with the organizations owed to determine correct amount of loans owed to them and work out a payment programme.

4.1.10 Non-response to audit queries and draft report

Similar to most of the councils, the management of City Council of Kisumu has not been responding to audit queries and draft reports on issues raised in the accounts. This includes the special audit report forwarded to the Council on 2 August 2011. It was eventually signed by the Auditor General on 25 October 2011 with no response from the Council. It was therefore not possible to ascertain the actions taken, if any, to address the issues raised.

The Committee therefore recommends that all Councils respond as soon as possible to the auditors on any management letters or draft reports sent to them. Failure by officers to adequately respond to or address issues raised should be subject to disciplinary action from the Ministry of Local Government or any relevant authorities.

The Committee also recommends that follow-up on audit issues raised should be used as a key performance indicator in the performance contracts signed by the Accounting Officers in the local authorities.

5.0 CITY COUNCIL OF MOMBASA

The Municipal Council of Mombasa was established in 1928 by the colonial government as a Board by the Local Government Amendment Ordinance. The board was mandated to undertake responsibilities such as Town Planning, Schools and Housing that were under the District Commissioner then. The board was elevated to Municipal status by the year 1959 thus extending the area of jurisdiction of the new Municipality to coincide with the area of Administrative District. On 4th July, 1963 the Municipal Council of Mombasa was constituted under the Local Government (Municipality of Mombasa) order 1963.

The Municipal Council of Mombasa (MCM) derives its mandate from the Local Government Act Cap 265 alongside other Acts of Parliament e.g. Education Act Cap 211, Public Health, Act Cap 242, Physical Planning Act Cap 286 among other statutes.

The MCM governs through two arms: the policy (or political) arm and the executive (or administrative) arm. The policy arm is responsible for all policy making in the council while the executive arm is the implementing organ of the council. The policy arm consists of elected councilors representing each of the electoral wards or election areas and nominated councilors appointed by political parties depending on the party strength. The councilors then elect a mayor from their ranks. The role of mayor is, however, largely ceremonial. The Town Clerk, who is the chief executive, heads the executive or policy implementing arm.

The following audit issues were considered in the accounts of the Municipal Council of Mombasa:

5.1.1 Non Submission, Opening Balances and Accuracy of the Accounts

The auditors stated that the Council had not prepared and submitted accounts for audit from the years 1990/1991 to 1999/2000. In addition opening balances for the years 2000/2001 and subsequent years could not be confirmed.

An audit of the council accounts also showed suspense accounts of Shs 114,907,160 for(2003/04), Shs 182,241,245(2004/05) and Kshs 477,778,977(2005/06) reflected in the General Rate Fund, Housing and Estates Fund and Housing Development Fund. Further, accounts for 2004/2005 and 2005/2006 were prepared using unapproved simplified accounting system.

The Committee heard that the Council did not prepare and submit accounts due to lack of qualified staff in the Council occasioned by poor terms of service. The Council also lacked a proper accounting system, did not prepare previous years' accounts, and managers were not keen on their duties.

The Council now ensures strict enforcement of final accounts preparation in accordance with Local Authorities Transfer Fund (LATF) conditionalities. In addition, through a Council resolution a team of officers have been assigned the responsibility of reconstructing the accounts for earlier years to deal with the issue conclusively.

The Council further explained that the high figures in the suspense accounts were caused by the waiver of interest in rates since discerning rate payers took advantage of the waiver; the debtors' ledger was never adjusted to reflect the issue. This problem was also due to a weak financial system missing details, and use of the suspense account as a balancing figure.

The Committee heard that prior to financial year 2007/2008 the Ministry attempted to replace the Municipal Accounting System but it was never gazetted, however the issue has been addressed by the issuance of the statutory Financial Reporting Template for Local Authorities as per Kenyan Gazette Notice No 6218 of 1st July 2008

The Committee observed that the Ministry of Local Government disbursed LATF to this Council despite them not having met all necessary requirements. In this instance, the Council submitted its accounts in the wrong format, combining LATF & RMLF accounts instead of maintaining separate books and schedules for each fund, in contravention of Section 28 of the LATF Act. The Committee could not rule out collusion between the council chief officers and the ministry officials to circumvent laid down rules. The Committee also observed that there was laxity on the part of the Ministry officials in enforcing regulations.

The Committee recommends that the Ministry stop flouting its own laws and release LATF funds only when all requirements have been met

5.1.2 Fixed/Non-Current Assets

The Council did not have a Fixed Assets Register (FAR) in place in 2003/2004, 2004/2005 and 2005/2006 financial years. The Council explained this was due to lack of qualified staff. Currently, a Fixed Assets Register was in place. The Council had a revaluation of its Motor Vehicles and Equipment done by Automobile Association of Kenya to update its records, and some logbooks for vehicles donated to the Council by various institutions were still being processed

The Council's fixed assets statement of Shs 1,675,972,803 as at 30th June 2001 could not be confirmed as ownership documents and valuation reports for land and buildings were unavailable. This lack of documents was mostly prevalent with community assets like primary schools where owners of the land gave consent for buildings to be erected on their land before the whole process was completed. Other ownership documents missing were those for public utility land. The Council has now written to the Commissioner of Lands on this issue, and also reported any lost documents to the land registrar, and gazetted the same.

The Committee also heard that there were fourteen parcels of land that were sold to private developers, contrary to the law. The Council explained that the plots were not sold but leased for 99 years to private developers, and separate sublease documents drawn and registered.

The Committee noted with concern that no effort was made to get land ownership documents over the years, and highlighted that this could be an avenue to allow irregular reallocation of land to private developers.

The Committee also noted with concern at the length of the leases for the 14 parcels of land given to private developers as this seemed akin to selling the land.

The Committee therefore recommends that:-

- (i) The Council move fast to acquire ownership documents for its land.
- (ii) The Ethics and Anti-Corruption Commission should investigate any irregularities found in the transfer of council property. Assets found to have been illegally acquired should be recovered and returned to the Council. In addition, the culprits should be prosecuted. Any council officers or local leaders found culpable should face disciplinary action.

- (iii) The Council should also consider using a geographical information system (GIS) and electronic payment system to aid in identifying and billing all Council lands and properties for better efficiency in its operations and collections
- (iv) The Council reduces the duration of the leases given to avoid losing its land

5.1.3 Issue of land in the Council

While reviewing the issue of Debtors in the council accounts for the audited accounts, and while on an inspection tour in the City Council of Mombasa, the Committee heard that the Council was owed rates totaling Kshs 2 billion. Out of this amount, Kshs 1.9 billion was owed on 4,297 government plots that are registered in the name of one Rose Kammi Hilgarter, who has not been identified. These plots were allegedly those allocated to Government agencies and important personalities.

The Council stated that the plots were lumped together under the said name during migration of rates data from the manual system to the geographical information system (GIS), which was an electronic land identification system. The Council further stated that reconciliation had been done for most of the plots with the manual records, and the process was still ongoing.

The Committee observed that the Council did not have any ownership documents for these plots and was not aware of any developments on these lands. This could have been a deliberate effort to provide an avenue for misappropriation of public land.

The Committee therefore recommends that:-

- (i) The Council should establish the ownership of these plots and develop an up-to-date database of all its properties. Further, the Council should

value the properties and collect the outstanding rates of Kshs. 1.9 billion from the actual owners identified

(ii) The Permanent Secretary, Ministry of Local Government should ensure that the Municipal Council of Mombasa has identified the correct owners of the plots, including their exact identities, and full rates paid. Settlement of these debts must include the accumulated interest as well.

5.1.4 Renewals Fund

The auditors stated that it was not possible to determine how the Council intends to finance replacement of depreciable fixed assets as there was non-provision of adequate renewal funds in 2003/04 and 2004/05. The auditors observed that renewals reserve items in the accounts were a mere book entry since by 30th June 2006, no tangible or bank deposit as required by section 219 of the Local Government Act, Cap 265, was in existence.

The Council stated that it did not earlier provide for a renewals fund in its budget due to lack of capacity in the Council staff at that time. The Council had now opened the account and were in the process of transferring the necessary funds to the account.

The Committee noted that the Council had not actually opened a renewals fund account. They were changing an existing account name from asset financing account to renewals fund account. Additionally, the Council had provided for Kshs. 50 million for the account in the Financial Year 2011/2012, but would only manage to transfer Kshs. 1 million to the account due to the current deficit.

The Committee recommends that the Council opens a renewals fund account and provide for a realistic amount, given the current deficit. The Council should also improve revenue collections so as to better its financial position.

5.1.5 Prepayments and Debtors

The auditors noted that the Council did not maintain debtors' schedules and listings, control ledgers and notes to accounts to show comparison of the balances. There was also no provision for bad and doubtful debts.

The Committee heard that these schedules and listings were not maintained due to lack of capacity and later, due to omission by staff. A debtors' ledger was currently in place, provision for bad and doubtful debts was set at a rate of 30% per year. Debtors' schedules were also availed to the auditors in subsequent years.

The Committee also heard that the Council had unrecovered rates debt. The Council had initiated a legal process to recover the debts. A list of defaulters owing the Council over Kshs 1, 000,000 had been forwarded to the Council's lawyers for recovery or prosecution.

The Committee recommends that:-

- (i) Adequate capacity be provided in this Council and all others, especially in the Treasurer's department, which prepares the financial statements of the Council. The Council should hire casuals or train staff to handle non-specialized work like updating of registers and ledgers so as to maintain accurate records.
- (ii) The Council applies or embraces Information Technology (IT) in its operations so as to capture and maintain all records on its debtors, enhance collections, and improve its efficiency in various processes and

systems. This will enable the Council to better its services to the people at a cheaper cost.

5.1.6 Imprest

The Committee heard that there was an un-surrendered imprest balance of Kshs.9,908,782 as at 30th June 2006. This amount was recovered in the subsequent Financial Year (2006/2007). The Council stated it was now strictly adhering to the rules of recovering imprest as provided in the Financial Management Regulation of 2007.

The Committee recommends that:-

- (i) The Chief Officers should always collect all outstanding imprest owed as soon as possible, failure to which, they should be surcharged for operating contrary to the financial regulations.
- (ii) All relevant supporting documentation for imprest recovered should be presented to the auditors at the time of audit so as to resolve this issue fully.
- (iii) The Ministry should institute disciplinary action against the Chief Officers who issued imprest and failed to recover it in time in contravention of financial regulations.

OTHER ISSUES IN THE COUNCIL

5.2 Changamwe Estate and debt-property swap agreement with LAPTRUST

The Council entered into a debt-swap agreement with the Local Authorities Pension Trust (LAPTRUST), a Pension Administrator for employees of the Local Authorities and Associated Companies to transfer New Changamwe Estate Phase 5 to the Trust in lieu of debt owed to LAPTRUST. The debt had

accumulated as a result of unremitted Council employees' monthly pension contributions

The tenants of the estate claimed not to have been consulted. The Changamwe Estate Residents Group took the matter to court, and it is still pending a determination.

The Committee observed that the Council entered into a debt-swap agreement with LAPTRUST without consulting the tenants of Changamwe Estate. The Committee recommends that, in future, such agreements need be done with wider and exhaustive consultation with relevant stakeholders.

The Committee also visited the estate while on an inspection tour in Mombasa and was concerned that all open spaces in the estate had been irregularly acquired by private developers, including a public road within the estate. As a result, residents had no access to the land in between the buildings, and the road.

The Committee therefore recommends that the irregularly allocated land in the estate, including the road, play grounds should be recovered and returned to the rightful owners.

ANNEX 1 – COMMITTEE MINUTES

MINUTES OF THE 4TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS
ACCOUNTS COMMITTEE HELD ON TUESDAY 1ST FEBRUARY 2011 IN MAIN
CONFERENCE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 11.30 A.M

PRESENT

Hon Thomas Mwadeghu, MP (Chairperson)
Hon Benjamin Langat, MP (Vice – Chairperson)
Hon Charles M Nyamai, MP
Hon. Pollyins O Anyango, MP
Hon Wilson Litole, MP

ABSENT WITH APOLOGY

Hon Abdul Bahari, MP
Hon Musa Sirma, MP
Hon Peter Mwathi, MP
Hon. Nemesyus Warugongo, MP
Hon Manson Nyamweya, MP

IN ATTENDANCE

Mr Julius Ariwomoi - Clerk Assistant II
Ms Wanjiru Ndiriri - Clerk Assistant III
Mr. Edwin Mbaya - Parliamentary Intern

NATIONAL ASSEMBLY

KENYA NATIONAL AUDIT OFFICE

Mr Philip O Owidi - Director of Audit
Mr. Leonard R Lari - Deputy Director of Audit
Mr Nashon O Otieno - Assistant Director of Audit
Mr Samson O Otunga - Assistant Director of Audit
Mr Julius Mutinda - Principal Auditor
Mr. Wilson K Maio - Senior Auditor

MINISTRY OF LOCAL GOVERNMENT

Mr. David Tambo - Assistant Director (Local Authorities
Inspection)
Mr. Isaac K. Kirui - Regional Local Government Officer
(Nyanza Region)

OBSERVER COUNCIL: COUNTY COUNCIL OF KISUMU

Mr Benson Opiyo - County Clerk
Mr Mark S Imbula - County Treasurer
Mr Joseph O Samba - Accountant
Ms Pamela A Oteng' - "
Ms Keziah Okoth - "

OBSERVER COUNCIL: COUNTY COUNCIL OF POKOT

Mr Kipkosgei M Tanui	-	County Clerk
Mr Nicholas K Rotich	-	County Treasurer
Mr Jackson Karimo	-	Auditor
Mr Tom K Kiptalam	-	Accountant II

MIN.NO. 11/2011

EVIDENCE: MUNICIPAL COUNCIL OF KISUMU

The abstracts of accounts of the Municipal Council of Kisumu for the years ended 30th June 2004 to 30th June 2008

Mr. Daniel S. Nkere, Town Clerk, Municipal Council of Kisumu, accompanied by

- | | | |
|----------------------------|---|------------------|
| (i) Mr Stephen Osiro | - | Treasurer |
| (ii) Mr Augustine N. Arodi | - | Chief Accountant |
| (iii) Mr Reuben Orinda | - | Accountant II |

appeared before the Committee to respond to the following queries raised in the 2003/2004 to 2007/2008 accounts

- (i) Format and accuracy of accounts
- (ii) Fixed Assets
- (iii) Debtors
- (iv) Sundry Creditors
- (v) Cash and bank balances

MIN. NO. 12/2011

PENDING ISSUES

a) Debtors

The Committee heard that outstanding imprests from the period under review totaled Kshs 21 million. The Committee directed the Town Treasurer to recover all the outstanding imprests within 90 days. The Auditors would then verify and report back to the Committee.

b) Sundry Creditors

The Council was unable to satisfactorily explain the amounts of Kshs. 513,665,611 owed by unknown creditors in the Delaying Creditors Balance account, and Kshs 700,000,000 in the suspense account.

Due to the magnitude of these figures, the Committee resolved to request the Auditor General to conduct a special audit on all the accounts of this Council to determine the veracity of the figures especially in the creditors', suspense and debtors' accounts. The Committee wishes that the special audit report be availed in one month's time.

**MINUTES OF THE 18TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS
ACCOUNTS COMMITTEE HELD ON TUESDAY 1ST MARCH 2011 IN MAIN
CONFERENCE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 11.30 A.M**

PRESENT

Hon Thomas Mwadeghu, MP (Chairperson)
Hon Benjamin Langat, MP (Vice-Chairperson)
Hon Manson Nyamweya, MP
Hon Pollyins O Anyango, MP
Hon Wilson Litole, MP
Hon Nemesyus Warugongo, MP

ABSENT WITH APOLOGY

Hon Abdul Bahari, MP
Hon Peter Mwathi, MP
Hon Musa Skirma, MP
Hon Charles M Nyamai, MP

IN ATTENDANCE

Mr Julius Ariwomoi
Ms Wanjiru Ndindiri
Mr Edwin Mbaya

NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III
- Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr B F N Kiguongo - Director of Audit
Ms Tabitha N Waweru - Assistant Director of Audit
Mr George O Nashon - Assistant Director of Audit
Mr Charles O Kiage - Principal Auditor

OBSERVER COUNCIL: COUNTY COUNCIL OF BUTERE/MUMIAS

Mr Joe M. Odundoh - Ag County Clerk
Mr Reuben W. Wanyama - Ag. Treasurer

OBSERVER COUNCIL: COUNTY COUNCIL OF NYAMIRA

Mr James Otieno - Oketch - County Clerk
Mr Joseph K. Wanyoike - County Treasurer
Ms Jemimah B. Abuga - Accountant

MIN.NO. 60/2011

EVIDENCE: CITY COUNCIL OF NAIROBI

The abstracts of accounts of the City Council of Nairobi for the years ended 30th June 2004 to 30th June 2008

Mr. Philip M. A. Kisia, Town Clerk, City Council of Nairobi, accompanied by

- | | | | |
|-----|---------------------|---|--|
| i | Mr John Ngugi | - | City Treasurer |
| ii | Ms Margaret A Osili | - | Deputy City Treasurer |
| iii | Mr L M Gatimu | - | Chief Accountant |
| iv | Mr John B Irungu | - | Manager, Wachira Irungu and Associates |
| v | Mr Stephen Tumbu | - | Partner, Wachira Irungu and Associates |

appeared before the Committee to respond to the queries raised in the 2003/2004 to 2007/2008 financial years as follows

- i) Opening Balance, Late Submission and Accuracy of Accounts

MIN. NO. 61/2011

PENDING EVIDENCE

Opening Balance, Late Submission and Accuracy of Accounts

The Committee noted discrepancies between the Council's response and the Auditor General's statement of the actual position on the verification of supporting documents. The Council claimed to have availed all payroll information, payment vouchers and invoices at the time of audit but the auditors had actually not seen these documents for confirmation.

The Committee gave the Council one (1) month to prepare an accurate and comprehensive response after resolving any outstanding issues with the Auditor General and private auditors before its next appearance. This response is also to include a segment on the challenges faced by the Council.

The Committee further expressed its willingness to hold a separate meeting with the Clerk to discuss other operational and managerial challenges faced, besides accounting or financial issues, where the Committee could lend its assistance.

MIN. NO. 62/2011

ADJOURNMENT

And the time being five minutes to one o'clock, the meeting was adjourned until the following day, 2nd March 2011 at 9 30 a.m

Signed **HON THOMAS MWADEGHU**
(Chairperson)

Date **24/05/2011**

**MINUTES OF THE 45TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS
ACCOUNTS COMMITTEE HELD ON TUESDAY 10TH MAY 2011 IN THE MAIN
CONFERENCE HALL, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.30 A.M**

PRESENT

Hon Thomas Mwadeghu, MP (Chairperson)
Hon Benjamin Langat, MP
Hon Pollyins O Anyango, MP
Hon Peter Mwathi, MP
Hon Charles M Nyamai, MP
Hon Manson Nyamweya, MP

ABSENT WITH APOLOGY

Hon. Wilson Litole, MP
Hon Abdul Bahari, MP
Hon. Musa Sirma, MP
Hon Nemesyus Warugongo, MP

IN ATTENDANCE

Mr Julius Ariwomoi
Ms Wanjiru Ndindiri
Mr Ibrahim Leruk
Mr Edwin Mbaya

NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III
- Clerk Assistant III
- Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Ms Elizabeth Nguring'a
Mr Kennedy Mwaniki
Mr George O Nashon

- Deputy Director of Audit
- Principal Auditor
- Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mr Paul Nderitu
Mrs Rose Mburu

- Assistant Director, Local Authorities
Inspectorate
- Regional Local Government Officer

OBSERVER COUNCIL: MUNICIPAL COUNCIL OF KITALE

Mr. John O. Mosongo
Mr. Albert Ariku
Mr. Hudson Kisaka

- Town Clerk
- Town Treasurer
- Deputy Treasurer

MIN.NO. 158/2011

EVIDENCE: MUNICIPAL COUNCIL OF MOMBASA

The abstracts of accounts of the Municipal Council of Mombasa for the years ended 30th June 2004 to 30th June 2006

The Committee further directed the Auditor General to provide a special report on the Municipal parking yard, as it appeared to have been a case of single-sourcing. The Committee was informed that there was also an ongoing court case on this issue.

MIN. NO. 160/2011

ANY OTHER BUSINESS

The Committee discussed the inspection tour at the end of the month and resolved to visit the North Rift & Western regions from June 2 – 6, 2011 instead of May 26 – 29, 2011 as earlier scheduled.

MIN. NO. 161/2011

ADJOURNMENT

And the time being ten minutes past twelve o'clock, the meeting was adjourned until Thursday 12th May 2011 at 9 30am.

Signed HON THOMAS MWADEGHU
 (Chairperson)

Date 22/11/2011

**MINUTES OF THE 51ST SITTING OF THE LOCAL AUTHORITIES AND FUNDS
ACCOUNTS COMMITTEE HELD ON TUESDAY 7TH JUNE 2011 IN COMMITTEE
ROOM NO. 7, PARLIAMENT BUILDINGS AT 9.30 A.M**

PRESENT

Hon. Thomas Mwachugu, MP (Chairperson)
Hon. Benjamin Langat, MP (Vice Chairperson)
Hon. Wilson Litole, MP
Hon. Musa Sirma, MP
Hon. Nemesyus Warugongo, MP
Hon. Pollyins O. Anyango, MP

ABSENT WITH APOLOGY

Hon. Charles M. Nyamai, MP
Hon. Manson Nyamweya, MP
Hon. Abdul Bahari, MP
Hon. Peter Mwathi, MP

IN ATTENDANCE

Mr. Julius Ariwomoi
Ms. Wanjiru Ndindiri
Mr. Ibrahim Ali Leruk

NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III
- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. B.F. N. Kiguongo - Director of Audit
Mrs. T. N. Waweru - Assistant Director of Audit
Mr. George O. Nashon - Assistant Director of Audit
Mr. C.O. Kiage - Principal Auditor

MIN.NO. 179/2011

EVIDENCE: CITY COUNCIL OF NAIROBI

Abstract of accounts of the City Council of Nairobi for the year ended 30th June 2004 and 30th June 2005.

Mr. Philip Kisia, Town Clerk, City Council of Nairobi, accompanied by:

- (i) Mr. John Ngugi - City Treasurer
- (ii) Mrs. Nancy Kirui - Senior Accountant

appeared before the Committee to respond to the queries raised in the 2003/2004 to 2004/2005 financial years.

MIN. NO. 180/2011

OPENING REMARKS

The Committee informed the Clerk that it took exception to his absence on 31st May 2011. The Clerk alleged that he did not receive official communication confirming the date & time of the meeting. The Committee resolved to follow up on this matter with the Ministry of Local Government.

MIN. NO. 181/2011

DEFERRED EVIDENCE

The Committee heard that the Auditor General was in the process of concluding certification of the accounts for the 2006/2007 to 2008/2009 financial years. This process would be complete by end of July 2011.

The Committee therefore resolved to postpone this meeting to a later date to ensure responses provided are for all the certified accounts due to issues being cross-cutting. The Council will receive communication of the new meeting date.

MIN. NO. 182/2011

ADDITIONAL INFORMATION

The Committee and the Clerk discussed the challenges faced at the Council, and possible ways the Council could be assisted in improving on its operations. The areas discussed included human resource, use of ICT, asset valuation, and future plans for the city.

MIN. NO. 183/2011

ADJOURNMENT

And the time being five minutes past eleven o'clock, the meeting was adjourned until Thursday 9th June 2011 at 9.30am.

Signed **HON THOMAS MWADEGHU**
(Chairperson)

Date **22/11/2011**

MINUTES OF THE 103RD SITTING OF THE LOCAL AUTHORITIES AND FUNDS
ACCOUNTS COMMITTEE HELD ON TUESDAY 31ST JANUARY, 2012 IN MAIN
CONFERENCE HALL, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.30 A.M

PRESENT

Hon Thomas Mwadeghu, MP - Chairperson
Hon Benjamin Langat, MP - Vice Chairperson
Hon Pollyins O Anyango, MP
Hon Wilson Litole, MP
Hon Charles M Nyamai, MP
Hon Jamleck Kamau, MP
Hon Peter Mwathi, MP

ABSENT WITH APOLOGY

Hon Nemesyus Warugongo, MP
Hon Abdul Bahari, MP
Hon Joseph Gitari, MP

IN ATTENDANCE

Mr Nicholas Emejien
Ms Wanjiru Ndiriri

KENYA NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Ms Tabitha Waweru - Assistant Director of Audit
Mr George O Nashon - Assistant Director of Audit
Mr Charles Kiage - Principal Auditor

MINISTRY OF LOCAL GOVERNMENT

Mr David Tambo - Ag Sr Assistant Director, LAI

MIN.NO. 359/2012

EVIDENCE: CITY COUNCIL OF NAIROBI

Abstract of accounts of the City Council of Nairobi for the years ended 30th June 2004 to 30th June 2008

Mr. Philip Kisia, Town Clerk, City Council of Nairobi, accompanied by.

(i) Mr Jimmy Kiamba - City Treasurer
(ii) Mr L M Gatimu - City Treasurer
(iii) Mr J A Kich - Chief Valuer
(iv) Mr N W Kiruri - Assistant Chief Accountant
(v) Mr Patrick Tom Odongo - Director of City Planning
(vi) Ms Rose Muema - Deputy Director of City Planning

MIN. NO. 361/2011

ANY OTHER BUSINESS

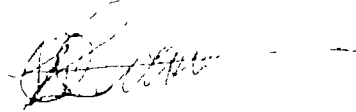
The Town Clerk updated the Committee that the Council and the Kenya Power and Lighting Company have been meeting to resolve outstanding issues on way-leaves, and the process was still ongoing. The Committee resolved to invite the Council for a follow-up meeting on this matter at a later date.

MIN. NO. 362/2011

ADJOURNMENT

The meeting was adjourned at forty minutes past twelve o'clock, until Tuesday 31/01/2012 at 2 30 pm

Signed



(Chairperson)

Date

16/12/12

MINUTES OF THE 104TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS
ACCOUNTS COMMITTEE HELD ON TUESDAY 31ST JANUARY, 2012 IN MAIN
CONFERENCE HALL, COUNTY HALL, PARLIAMENT BUILDINGS AT 2.30 P.M

PRESENT

Hon Thomas Mwadeghu, MP - Chairperson
Hon Benjamin Langat MP - Vice Chairperson
Hon Pollyins O Anyango, MP
Hon Wilson Litole, MP
Hon Charles M Nyamai, MP
Hon Joseph Gitari, MP

ABSENT WITH APOLOGY

Hon Nemesyus Warugongo, MP
Hon Jamleck Kamau, MP
Hon Peter Mwathi, MP
Hon Abdul Bahari, MP

IN ATTENDANCE

Mr Nicholas Emejen
Ms Wanjiru Ndindiri

KENYA NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr Philip O Owidi - Director of Audit
Mr Leonard R Lari - Deputy Director of Audit
Mr Samson O Otunga - Assistant Director of Audit
Mr George O Nashon - Assistant Director of Audit
Mr Julius M Mutinda - Principal Auditor
Mr Maiyo Wilson - Senior Auditor

MINISTRY OF LOCAL GOVERNMENT

Mr David Tambo - Ag Sr Assistant Director, LAI

MIN.NO. 363/2012

EVIDENCE: MUNICIPAL COUNCIL OF KISUMU

Abstract of accounts of the Municipal Council of Kisumu for the years ended 30th June 2004 to 30th June 2007 and a Special Audit Report of the Auditor General on the Debtors, Creditors and Local Authorities Transfer Fund of the Municipal Council of Kisumu for the four (4) years' period ended 30th June 2007

Mr. Christopher Rusana, Town Clerk, Municipal Council of Kisumu, accompanied by

(i) Mr Stephen Osiro - Treasurer
(ii) Cllr Bernard Muga - Chair – Finance Committee
(iii) Ms Peresin Omino - Accountant

Further the Committee directed the Ministry of Local Government to issue a circular stopping the use of suspense accounts by all local authorities. The Committee further requested the Auditor General to provide details on all the entries in the suspense account that caused the figure to drop from Kshs 1 billion in June 2007 to Kshs 312 million in June 2009

(iv) Imprest

The Committee was informed that the Council had issued imprest of Kshs 22 million. Kshs 17 million was owed by the Council staff out of which Kshs 10 million is owed by Messrs John Sande and Arthur Gor

The Committee raised concern that there is laxity on the part of the Council in to enforce rules and regulations guiding issuance and surrender of imprest

The Committee directed that the Council provides a detailed list of imprest holder, age of the imprest and recovery schedule in the next meeting and further that the highest imprest holders should attend the meeting

(v) Investments

The Committee heard that the Council invested in Sunset Hotel and Kisumu Water and Sewerage Co Ltd (KIWASCO), but has not been receiving dividends from Sunset Hotel owing to losses that the hotel has been making

The Committee raised concern that Sunset Hotel has not valued its assets so the Council is unable to get its fair share of investment

The Committee deliberated on the investments by the Council and directed that the Municipal Council of Kisumu, KIWASCO, Sunset Hotel and KTDC be invited within 14 days to deliberate on investments by the Council, property valuation and dividends. The Town Clerk was directed to ensure that the then Clerk and Treasurer and the CEO of KIWASCO during the year 2007 appear for the meeting as well

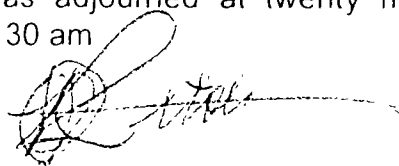
The Committee resolved to invite the Council back in a month or two to conclude its evidence on all other pending matters

MIN. NO. 366/2011

ADJOURNMENT

The meeting was adjourned at twenty minutes past five o'clock, until Wednesday 01/02/2012 at 9 30 am

Signed



(Chairperson)

Date

21/1/12

MINUTES OF THE 126TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS
ACCOUNTS COMMITTEE HELD ON THURSDAY 15TH MARCH, 2012 IN THE MAIN
CONFERENCE HALL, COUNTY HALL, PARLIAMENT BUILDINGS AT 12.00 PM

PRESENT

Hon Thomas Mwachugu, MP - Chairperson
Hon Benjamin Langat, MP - Vice Chairperson
Hon Charles M Nyamai, MP
Hon Pollyins O Anyango, MP

ABSENT WITH APOLOGY

Hon Nemesyus Warugongo, MP
Hon Peter Mwathi, MP
Hon Joseph Gitari, MP
Hon Jamleck Kamau, MP
Hon Wilson Litole, MP
Hon Abdul Bahari, MP

IN ATTENDANCE

Mr Nicholas Emején
Ms Wanjiru Ndindiri

KENYA NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr Leonard R Lari
Mr Samson O Otunga
Mr Tom O Oketch

- Deputy Director of Audit
- Assistant Director of Audit
- Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Ms Grace W Muchoki

- Assistant Director, LAI

MIN. NO. 442/2012

EVIDENCE: MUNICIPAL COUNCIL OF KISUMU, KENYA
TOURISM DEVELOPMENT CORPORATION (KTDC), AND
KISUMU WATER AND SEWERAGE COMPANY
(KIWASCO)

Mr. Christopher Rusana, Town Clerk, Municipal Council of Kisumu, accompanied by

(i) Mr Stephen Osiro - Treasurer
(ii) Mrs Marianne Jordan - Managing Director, KTDC
(iii) Mr William Orondo - Manager, Sunset Hotel, KTDC
(iv) Eng David Onyango - Managing Director, KIWASCO
(v) Mr Laurence Kiprutoh - Chief Accountant
(vi) Ms Caroline Onjara - Internal Auditor
(vii) Mr James A Okeyo - Head of Finance, KIWASCO

The meeting was adjourned at forty minutes past one o'clock until Tuesday 20th March 2012 at 9 30am

Signed


(Chairperson)

Date

19th March 2012

MINUTES OF THE 133RD SITTING OF THE LOCAL AUTHORITIES AND FUNDS
ACCOUNTS COMMITTEE HELD ON WEDNESDAY 11TH APRIL, 2012 IN THE MAIN
CONFERENCE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.30 A.M

PRESENT

Hon. Pollyins O Anyango, MP - Ag. Chairperson

Hon. Wilson Litole, MP

Hon. Charles M. Nyamai, MP

ABSENT WITH APOLOGY

Hon. Benjamin Langat, MP (Vice Chairperson)

Hon. Thomas Mwadeghu, MP (Chairperson)

Hon. Peter Mwathi, MP

Hon. Abdul Bahari, MP

Hon. Joseph Gitari, MP

Hon. Nemesyus Warugongo, MP

IN ATTENDANCE NATIONAL ASSEMBLY

Mr. Nicholas Emejen - Clerk Assistant II

Ms. Wanjiru Ndindiri - Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. Philip O. Owidi - Director of Audit

Leonard R. Lari - Deputy Director of Audit

Mr. Tom O. Oketch - Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Prof. Karega Mutahi - Permanent Secretary

Jeremiah Onchieku - Principal Inspectorate

MINISTRY OF LANDS

Dorothy Angote Muya - Permanent Secretary

Zablon A. Mabea - Commissioner of Lands

KENYA TOURIST DEVELOPMENT CORPORATION

Marianne Jordan	Managing Director
Carrey Frawein	Head of Legal
Dominic Ndewa	Head of Investment

ETHICS AND ANTI CORRUPTION COMMISSION

Kennedy Bosire	Head of Investigations
Wilfred Mutiga	Investigator

MIN.NO. 466/2012 ILLEGAL TRANSFER OF PUBLIC LAND

Evidence from the Managing Director, KTDC

The Kenya Tourist Development Corporation possesses Title No. 1178 and 1190. Lot no L.R. 1190 was illegally acquired by a private developer. The KTDC never discussed the issue of subdivision and never requested for such sub division. The KTDC wishes to retain a single title for the plot.

Evidence by the Permanent Secretary

Ms Dorothy Angote informed the Committee that Sunset Hotel Ltd was allocated L.R. No Kisumu Municipality/Block XI (original L.R. No 1148/1304) measuring 1.5298 Ha in November 30, 1976.

Sunset Hotel Ltd applied for an extension of an adjacent plot measuring 0.927 Ha in April 11, 1980 which was granted and allotted in August 28, 1981. A survey was done to consolidate the two parcels and Sunset Hotel Ltd was requested to surrender the original title for Kisumu Block XI/78 to facilitate the issuance of a new lease but the surrender was not effected.

In November 29, 1984 the provincial physical planning officer submitted on behalf of the management of Sunset Hotel a sub division scheme for plot Kisumu municipality block XI/87 into two portions. Subsequently a survey of the two plots was carried creating L.R. No. Kisumu Municipality Block XI/89 and 90 measuring 1.529 Ha and 0.9437 Ha respectively. Before the titles could be issued for the two plots block XI/90 was allocated to Peter Onyango Obado and Beatrice Okeyo in 1998 and the lease in their favour registered in June 12, 1998 and 5 days after the registration of the lease the land was transferred to Charanjit Singh Hayer and later charged to standard chartered bank for Kshs 3 million.

The allocation of L.R No Kisumu Municipality Block XI/90 to Peter Onyango Obado and Beatrice Okeyo was irregular and fraudulent. To safeguard governments interest the ministry placed restrictions against the Title in august 14, 2006 and in February 4, 2011 the Title for L.R Kisumu Municipality Block XI/90 was revoked vide Gazette Notice No 1272 Following the revocation the Ministry is seeking clarification from sunset as to whether to proceed with the sub division or amalgamation of the plots into one

Evidence from the Permanent Secretary, Ministry of Local Government

The Permanent Secretary, Prof. Karega Mutahi informed the Committee that the Ministry of Local Government and the Municipal Council of Kisumu never participated in the decision to dispose the plot.

Evidence from the Ethics and Anti Corruption Commission

The matter was brought before the then KACC in 2010. Investigations on the matter are still ongoing with the intention of tracing the property and recovering it and restoring the title with the original owner and criminally prosecute those involved in the illegal alienation.

The Committee directed that EACC appears before it in 14 days to report on the nature and status of investigations on the illegal alienation of public land belonging to Sunset Hotel Ltd.

MIN. NO. 467/2012

ADJOURNMENT

The meeting adjourned at Fifty Five Minutes past ten o'clock.

Signed



(Chairperson)

Date

11th Sept 2012

MINUTES OF THE 145TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON TUESDAY 15TH MAY, 2012 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 11.10 A.M

PRESENT

Hon Thomas Mwachugu, MP (Chairperson)
Hon Pollyins O Anyango, MP
Hon Charles M Nyamai, MP

ABSENT WITH APOLOGY

Hon Benjamin Langat, MP (Vice Chairperson)
Hon Nemesys Warugongo, MP
Hon Peter Mwathi, MP
Hon Joseph Gitari, MP
Hon Abdul Bahari, MP
Hon Wilson Litole, MP

IN ATTENDANCE NATIONAL ASSEMBLY

Mr Nicholas Emejen - Clerk Assistant II

KENYA NATIONAL AUDIT OFFICE

Mr Joshua Kereda – Deputy Director of Audit
Mr Tom O Oketch – Assistant Director of Audit
Mr Kennedy Mwaniki - Regional Auditor, Mombasa

MINISTRY OF LOCAL GOVERNMENT

S M Mangale - Principal Human Resource Officer
David Tambo - Ag Senior Assistant Director

MUNICIPAL COUNCIL OF MOMBASA

Rose Ngowa – Deputy Town Clerk
John Ngugi – Town Treasurer
Martin Odhiambo – Chief Valuer
Moses M. Njuguna – Accountant

CHANGAMWE RESIDENTS ASSOCIATION

Evans Owouche – Chairman, Changamwe Housing Committee
Jimmy Odari – Chairman, Changamwe Estate Residents Group
Peter N Muturi – Treasurer, Changamwe Estate Residents Group

Beldina A Otiemo – Secretary, Changamwe Estate Residents Group
Ibrahim Abdi – Member, Changamwe Estate Residents Group

MIN.NO. 511/2012 SALE OF CHANGAMWE ESTATE BY MUNICIPAL COUNCIL OF MOMBASA TO LAPTRUST

The Committee was informed that the Town Clerk was attending a course at KIA and could therefore not attend the committee meeting

The Committee took exception with the failure by the Town Clerk to appear before it and observed that the town clerk had snubbed the invitation by Parliament in contravention of section 23 of the National Assembly (Powers and Privileges) Act, Cap 6. The Committee observed that parliamentary business takes precedence and that those invited should attend meetings

The Committee deliberated on the matter and resolved to visit Mombasa to inspect projects, meet the residents of the estate and address other queries on Mombasa Municipal Council

MIN NO. 512 /2012 ANY OTHER BUSINESS

The Committee directed that the provincial auditor briefs it on the transfer of Changamwe Estate to LAPTRUST on Tuesday May 22, 2012

MIN. NO. 513 /2012 ADJOURNMENT

The meeting adjourned at forty five minutes past Eleven o'clock

Signed:
(Chairperson)

Date:

MINUTES OF THE 156TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON THURSDAY 7TH JUNE, 2012 IN THE COMMITTEE ROOM, 4TH FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 9 30 A M

PRESENT

Hon Thomas Mwachugu, MP - Chairperson
Hon Charles M Nyamai, MP
Hon Joseph Gitari, MP
Hon Wilson Litole, MP
Hon Pollyins Anyango MP

ABSENT WITH APOLOGY

Hon Benjamin Lagat MP
Hon Peter Mwathi, MP
Hon Abdul Bahari, MP
Hon Nemesyus Warugongo MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

Mr Nicholas Emejen - Clerk Assistant II
Mr Job Kimani - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr Joshua Kereda - Deputy Director of Audit
Mr George Otieno Nahashon - Assistant Director of Audit
Mr Tom Oketch - Assistant Director of Audit
Mr C O Kiage - Principal Auditor

MINISTRY OF LOCAL GOVERNMENT

Mr Paul Nderitu - Ag Senior Assistant Director, LAI

CITY COUNCIL OF NAIROBI

Mr Roba Duba - Town Clerk
Mr J M Kiamba - City Treasurer
Mr A J Owuor - Director Legal
Eng S K Mburu - City Engineer
Mr David Wambugu - Accountant
Nancy Kiruri - Assistant Chief Account

The Committee observed that the former Town Clerk (Mr. Phillip Kisia) and Treasurer had not attended the meeting yet the issues/audit queries under discussion were during their tenure and further that the current office holders were new to the office and could not therefore adequately respond to issues raised

The Committee deliberated on the composition of the witnesses from the City Council of Nairobi and the Ministry of Local Government and resolved to reschedule the meeting to Tuesday 12/6/2012 at 11:30 am

The Committee further resolved that the issues for discussion during the Tuesday meeting will include -

- (i) Kshs 5 billion loan taken by the City Council of Nairobi from Equity Bank - its utilization mode of payment, guarantees and securities and how it was issued
- (ii) Roads Maintenance Levy Fund issued to the City Council of Nairobi by the Kenya Urban Roads Authority for the maintenance of roads in the City
- (iii) Roads Maintenance Levy Fund issued to the Urban Development Department (UDD) by the Kenya Urban Roads Authority for the maintenance of roads in urban areas

The Committee also directed the Ministry of Local Government to avail copies of letters of transfers handed out to officials of local authorities in the recent transfers

MIN NO. 545/2012 ADJOURNMENT

The meeting was adjourned at Forty Minutes past ten O'clock till Tuesday 9:30 am on 12th June 2012

Signed

(Chairperson)

Date

MINUTES OF THE 157TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS
COMMITTEE HELD ON THURSDAY 14TH MAY, 2012 IN MAIN CONFERENCE ROOM
HALL, PARLIAMENT BUILDINGS AT 9 30 A M

PRESENT

Hon Thomas Mwachugu, MP (Chairperson)
Hon Wilson Litole, MP
Hon Joseph Gitari MP
Hon Abdul Bahari MP
Hon Charles M Nyamai MP

ABSENT WITH APOLOGY

Hon Nemesyus Warugongo, MP
Hon Benjamin Langat, MP (Vice Chairperson)
Hon Pollyins O Anyango, MP
Hon Peter Mwathi MP

IN ATTENDANCE NATIONAL ASSEMBLY

Mr Nicholas Emejen - Clerk Assistant II
Mr Job Kimani - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Leonard R Lari – Deputy Director of Audit
Samson O Otunga - Assistant Director of Audit
George Otieno Nahashon - Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

David tambo - Ag Senior Assistant Director
Joyce Gichomo – Senior Assistant Director Human Resource
Samuel Mangale – Principal, Human Resource
Justus N Okelo – Regional Local Government Officer , Nyanza

MIN NO 546/2012 EVIDENCE. MUNICIPAL COUNCIL OF KISUMU

Abstract of accounts of the Municipal Council of Kisumu for the years ended 30th June 2003 to 30th June 2007

Mr Christopher C Rusana - Town Clerk Municipal Council of Kisumu accompanied by

Margaret A Osili - Treasurer, Municipal Council of Kisumu

Lawrence K Ngeny - Chief Accountant, Municipal Council of Kisumu

Daniel S Nkere - County Clerk, County Council of Bomet

Stephen Osiro - Deputy Treasurer, City Council of Nairobi

Bernard E Muga - Finance Chairman Municipal Council of Kisumu

appeared before the Committee to respond to the pending evidence for queries raised in the 2003/2004 to 2006/2007 Financial Years as follows -

- Imprest
- Valuation of investments
- Debtors and receivables

MIN NO. 547 /2012 PENDING EVIDENCE

- (i) **Imprest** – The Committee was informed by the town clerk that the council has been able to reduce the imprest owed to Kshs 9 142 797 down from the previous figure of Kshs 17 million. The highest imprest holders are Messrs John Sande and Arthur Gor with Kshs 1,816,044 and 3,635,872 respectively. The imprest was issued to the two officers on behalf of the civic wing of the council.

The Committee observed that the imprest was taken by the two officers on behalf of councilors who failed to account for the imprest and now the two officers are paying for money spent by councilors.

The former clerk Mr. Daniel Nkere was declared hostile witness for misleading the committee and failing to answer questions raised by the Committee.

- (ii) **Valuation of assets** – The Committee was informed by the town clerk that the municipal council of Kisumu stake on sunset hotel is 5% of the total investment however the council has never received dividends accruing from the investment and council does not have a share certificate on the investment.

The Committee directed that the council acquires the share certificate from KTDC in a weeks time

(iii) Debtors and receivables The town clerk informed the committee that a forensic audit on its debtors/receivables is being undertaken and a report will be submitted

MIN NO.548 /2012

ADJOURNMENT

The meeting adjourned at Eleven o clock

Signed. _____

Date. _____

(Chairperson)

MINUTES OF THE 180TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON TUESDAY, 17TH JULY, 2012 IN THE MAIN CONFERENCE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 2.30 PM

PRESENT

Hon Thomas Mwachugu, MP – Chairperson
Hon. Benjamin Langat, MP - Vice Chairperson
Hon. Pollyins Anyango, MP
Hon. Charles M Nyamai, MP
Hon. Wilson Litole, MP

ABSENT WITH APOLOGY

Hon. Abdul Bahari, MP
Hon Nemesys Warugongo, MP
Hon. Joseph Gitari, MP
Hon Peter Mwathi, MP
Hon. John Harun Mwau, MP

IN ATTENDANCE

Ms. Wanjiru Ndindiri - Clerk Assistant III
Mr. Job Kimani - Parliamentary Intern

KENYA NATIONAL ASSEMBLY

KENYA NATIONAL AUDIT OFFICE

Ms. Elizabeth Nguring'a - Deputy Director of Audit
Mr Joshua Kereda - Deputy Director of Audit
Mr. George O. Nashon - Assistant Director of Audit
Mr. Tom O Oketch - Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mr. David Tambo - Ag. Sr. Assistant Director, LAI
Mrs. Sally Tanui - Ag. Director, Human Resource Management

MIN. NO. 576/2012

EVIDENCE: CITY COUNCIL OF NAIROBI

Abstract of accounts of the City Council of Nairobi for the years ended 30th June 2004 to 30th June 2009.

Mr. Roba Duba, Town Clerk, City Council of Nairobi, accompanied by

(i) Mr. Jimmy Kiamba - City Treasurer
(ii) Mr. Stephen Osiro - Deputy City Treasurer
(iii) Mr. Luke M. Gatimu - Chief Accountant

- (iv) Mr Ekaya Alumasi - Accountant
- (v) Mr. Jacob Munge - Treasurer, Municipal Council of Mavoko
- (vi) Mr John Ngugi - Treasurer. Municipal Council of Mombasa

appeared to respond to queries raised in the 2003/2004 to 2008/2009 Financial Years.

The Committee heard that the Council had not been cooperating fully with the auditors, evidenced by the fact that the responses to the queries raised were delivered to the auditors at the time of the sitting. Additionally, the immediate former Clerk was not invited formally to appear for the meeting. This was explained as an oversight by the Ministry. Other past clerks did not appear for the meeting despite formal notification.

The Committee noted with concern that the Council did not respond to issues raised by the auditors through management letters, draft and final reports, nor did it avail its chief officials for exit meetings. The Committee thus resolved to invite the Council for a follow-up meeting to conclude its evidence, and will invite the press to that sitting.

The Committee was also dissatisfied with the response of the Ministry representative on the issue of the past officers, and decided to raise its concerns with the Permanent Secretary at the meeting scheduled for the next day

MIN. NO. 577/2012 **ANY OTHER BUSINESS**

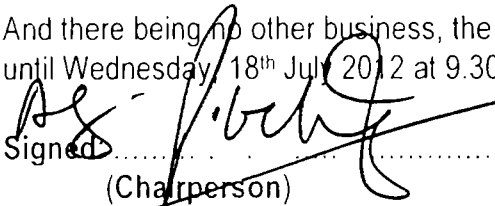
The Committee discussed the issue of Kshs. 5 billion which was a loan borrowed by the Council from Equity Bank. This was an issue mentioned in an earlier meeting

The Committee directed the Treasurer to avail the following documents regarding the Kshs. 5 billion loan at the meeting scheduled for the following day:

- a) The application for the loan;
- b) The letter of offer and the signed loan agreement;
- c) The Council resolution to borrow;
- d) Ministerial approval for the loan;
- e) A justification for the Kshs. 50 million paid as negotiation fees for this transaction;
- f) Savings gained from the loan & whether the Council was better or worse off after receipt of the loan;
- g) A breakdown of the money's utilization;
- h) Financial justification for borrowing the money;
- i) A cost-benefit analysis of the loan.

MIN. NO. 578 /2012 **ADJOURNMENT**

And there being no other business, the meeting was adjourned at Fifteen minutes past Four o'clock until Wednesday, 18th July 2012 at 9.30am.

Signed: 
(Chairperson)

Date: 27/9/12

MINUTES OF THE 181ST SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON WEDNESDAY, 18TH JULY, 2012 IN THE MAIN CONFERENCE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.30 AM

PRESENT

Hon Thomas Mwadeghu, MP – Chairperson
Hon Pollyins Anyango, MP
Hon Wilson Litole, MP
Hon. Charles M. Nyamai, MP

ABSENT WITH APOLOGY

Hon. Benjamin Langat, MP - Vice Chairperson
Hon. Peter Mwathi, MP
Hon. Joseph Gitari, MP
Hon Abdul Bahari, MP
Hon. Nemesyus Warugongo, MP
Hon John Harun Mwau, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

Mr. Nicholas Emejien - Clerk Assistant II
Ms Wanjiru Ndindiri - Clerk Assistant III
Mr. Job Kimani - Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Ms. Elizabeth W Nguring'a - Deputy Director of Audit
Mr Joshua Kereda - Assistant Director of Audit
Mr George Otieno Nashon - Assistant Director of Audit
Mr. Tom O. Oketch - Assistant Director of Audit

MIN. NO. 579/2012

EVIDENCE: MINISTRY OF LOCAL GOVERNMENT AND CITY COUNCIL OF NAIROBI

Prof. Karega Mutahi, CBS, Permanent Secretary, Ministry of Local Government, accompanied by:

(i) Amb. P. R. Owade - Deputy Secretary
(ii) Mr. David Tambo - Acting Senior Assistant Director (LAI)
(iii) Ms Christine Ndaka - Chief Inspector
(iv) Mr G A. Kamashara - Senior Chief Finance Officer
(v) Mr. Roba Duba - City Clerk
(vi) Mr Jimmy M. Kiamba - City Treasurer
(vii) Mr Stephen O Osiro - Deputy City Treasurer

appeared to respond to queries raised by the Committee on the payment of CILOR, way leaves and loans

The Committee was informed that the Permanent Secretary, Ministry of Finance, was unable to attend the meeting due to other official engagements, but had sent his apologies and requested a rescheduling

(i) CILOR and Way Leaves

The Committee heard that the Government had no policy on how to clear the historical debts owed to local authorities on way leaves and CILOR. However, the Government was committed to clearing these debts on their validation, as evidenced by the World Bank- financed study in 1990 and 1992

The Committee was informed that the Ministry of Local Government had formed a team to validate accounts owed to local authorities in CILOR. The team had visited various local authorities country wide and had noted the following issues that bedeviled local authorities

- a) Poorly maintained records
- b) Lack of and or use of out dated Valuation rolls
- c) Majority of the local authorities have weak revenue bases
- d) Lack of uniformity on the rates charged by local authorities on gazetted forests
- e) Huge chunks of communal land that was not subject to rates by the councils
- f) Lack of confirmation of pieces of land said to be owned by the government agencies and departments due to unprocedural allocation process of public land

The Committee was informed that the City Council of Nairobi was claiming an outstanding amount of Ksh 64,934,043.161 00 as CILOR. However, this amount had not yet been validated by the audit team as the Council was yet to avail the relevant documents. The Committee also heard that the Government had cleared several obligations owed by the local authorities to it, such as the Kshs 3.3 billion that the City Council of Nairobi owed as loans that it had failed to service

The Committee heard that the audit team had come up with the following figures on the total amount of CILOR and way leaves owed to local authorities:

- The initial amount as per the Ministry of Finance was Kshs. 5.9 billion (CILOR of Ksh 2.3 billion and way leaves of Ksh 3.6 billion).
- The Ministry's records showed that the outstanding CILOR claim as at 28/2/2012 was Ksh 2,645,484,817.05 whereas the local authorities were claiming Ksh 6,325,591,115.90 of which only Ksh 2,842,807,837.20 was validated.

(ii) Clearance of mutual Debts between City Council of Nairobi and Kenya Power

Regarding the clearance of mutual debts between the City Council of Nairobi and the Kenya Power Company, the Committee heard that the historical figure that was agreed to between the Council and Kenya Power is Kshs 426,147,190.00. The major issue of concern in validating the way leaves debt is that connectivity was expanding everyday hence determining the actual data was difficult.

The Committee heard that a circular by the Permanent Secretary Ministry of Local Government stopped local authorities from levying way leaves with effect from December 2007, as agreed between the Treasury and other parties

MIN. NO. 580/2012

PAPERS LAID

The City Treasurer laid the following documents on the table:

- a) *Background on the City Council of Nairobi's debt portfolio as at 30th October 2009 that led it to seek the loan from the Equity Bank of Kenya*
- b) *Ministerial approval of the loan*
- c) *Summary of the loan agreement*
- d) *Application for the loan*
- e) *Loan agreement*
- f) *Approval from the Ministry*

These documents were in regards to the Equity Bank loan taken by the City Council of Nairobi, as requested the previous day by the Committee

MIN. NO.581 /2012

ANY OTHER BUSINESS

The Committee notified the Permanent Secretary of its dissatisfaction with the performance of some of the Ministry of Local Government officials who had been seconded to represent him in the Committee sittings

The Permanent Secretary noted this and undertook to have only directors attend the meetings on his behalf in future. as many times it was not possible to have the Deputy Secretary, Amb Owade, represent him due to pressing commitments elsewhere

The Committee expressed concern regarding the fact that the Mayor of the City Council signed the form of acceptance despite lacking the requisite authority to sign official documents. The Committee also noted that the document presented by the Council lacked a signature, and hence directed the Clerk to rectify this error and present a properly authenticated document.

MIN. NO. 582/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at ten minutes past twelve o'clock until later in the afternoon.

Signed: 
(Chairperson)

Date: 27/9/12

MINUTES OF THE 182ND SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON WEDNESDAY 18TH JULY, 2012 IN THE MAIN CONFERENCE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 11.30 AM.

PRESENT

Hon Thomas Mwadeghu, MP – Chairperson
Hon Benjamin Langat, MP - Vice-Chairperson
Hon. Pollyins Anyango, MP
Hon. Peter Mwathi, MP

ABSENT WITH APOLOGY

Hon. Joseph Gitari, MP
Hon. Abdul Bahari, MP
Hon. Nemesys Warugongo, MP
Hon. Wilson Litole, MP
Hon. Charles M. Nyamai, MP
Hon. John Harun Mwau, MP

IN ATTENDANCE

Mr. Nicholas Emejien -
Mr. Job Kimani -

KENYA NATIONAL ASSEMBLY

Clerk Assistant II
Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Ms. Elizabeth W. Nguring'a - Deputy Director of Audit
Mr. Joshua Kereda - Assistant Director of Audit
Mr. George Otieno Nashon - Assistant Director of Audit
Mr. Tom O. Oketch - assistant director of audit

MINISTRY OF LOCAL GOVERNMENT

Amb. P. R. Owade - S.L.A.A Ministry of Local Government
Mr. E. M. Onyango - Director, UDD

MINISTRY OF ROADS

Eng. P. C. Kilimo - Roads Secretary

KENYA URBAN ROADS AUTHORITY (KURA)

Eng. J. N. Nkadayo - Director General
Eng P. M. Mundinia - G. M. (MTCE)

MIN. NO. 583/2012

**EVIDENCE: CITY COUNCIL OF NAIROBI AND KENYA URBAN
ROADS AUTHORITY (KURA)**

Mr. Roba Duba, City Clerk. City Council of Nairobi, accompanied by:

- (i) Mr. Jimmy M. Kiamba - City Treasurer
- (ii) Mr. Stephen O. Osiro - Deputy City Treasurer

appeared to respond to queries raised by the Committee on unaccounted for Roads Maintenance Levy Fund (RMLF) by the City Council of Nairobi, interference with KURA operations, and interference with road reserves.

MIN. NO. 584/2012

PAPERS LAID

The Town Clerk laid the following papers on the table:

- a) *The list of names of 12 contractors whose contracts were not signed.*
- b) *The letter from Equity Bank confirming the closure of the RMLF accounts.*
- c) *List of the Equity Bank and Cooperative Bank accounts that the council had*

These relate to the unaccounted for RMLF given to the Council by KURA.

MIN. NO. 585/2012

PENDING EVIDENCE

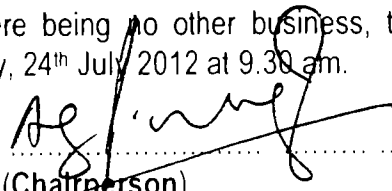
The Committee heard that the Council had its provident fund and trust fund accounts in Equity Bank. However, as at 30th June 2012, these two accounts were dormant. The Committee directed the Council to confirm, by way of a report, whether any fraudulent activities had been observed in these two accounts.

The Council also informed the Committee that it had three accounts for its LATF, one in Equity Bank and two in Cooperative Bank. The Committee expressed concern at this and directed that all unnecessary accounts be closed down. The Committee also directed that the Council should also hand over all the cash books and certificates of these accounts for audit review.

MIN. NO. 586/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at half past one o'clock until Tuesday, 24th July 2012 at 9.30 am.

Signed: 
(Chairperson)

Date: 27/9/12

MINUTES OF THE 191ST SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON TUESDAY, 9TH AUGUST, 2012 IN THE COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 9.30 AM

PRESENT

Hon Thomas Mwadeghu, MP – **Chairperson**
Hon Benjamin Langat, MP - **Vice Chairperson**
Hon. Peter Mwalhi, MP
Hon. Charles M Nyamai, MP
Hon Abdul Bahari, MP
Hon Nemesyus Warugongo, MP
Hon Wilson Litole, MP

ABSENT WITH APOLOGY

Hon John Harun Mwau, MP
Hon. Pollyins Anyango, MP
Hon Joseph Gitari, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

Mr. Nicholas Emejen - Clerk Assistant II
Ms. Wanjiru Ndiriri - Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr Joshua Kereda - Deputy Director of Audit
Mr. George Otieno - Assistant Director of Audit
Ms. Elizabeth Nguringa - Deputy Director of Audit
Mr Benjamin Mayenga - Auditor

MINISTRY OF LOCAL GOVERNMENT

Mrs. Ruth Kiru - Director, Local Authorities Inspectorate
Mr. Paul Nderitu - Ag Senior Assistant Director

MIN. NO. 613/2012

EVIDENCE: CITY COUNCIL OF NAIROBI

The special audit report on the City Council of Nairobi (CCN) Kshs 5 billion loan from Equity Bank Limited.

Mr. Roba Duba, Town Clerk, City Council of Nairobi, accompanied by.

(i) Mr. Jimmy Kiamba - Treasurer, CCN
(ii) Mr. Philip Kisia - Former Town Clerk, CCN
(iii) Mr. A J Owuor - Director, Legal Services CCN
(iv) Mr Leboo Ole Morintat - Deputy Town Clerk, CCN
(v) Mr L.M. Gatimu - Chief Accountant, CCN
(vi) Mr Laban M. Atemba - Treasurer, County Council of Butere-Mumias
(vii) Ms. Nancy Kiruri - Assistant Chief Accountant (ACA), CCN

- | | | |
|-----------------------|---|---|
| (viii) Mr John Ngugi | - | Treasurer, Municipal Council of Mombasa |
| (ix) Mr Stephen Osiro | - | Deputy Treasurer, CCN |
| (x) Mr Nyoike N | - | Ag Chief Valuer, CCN |
| (xi) Mr Ekaya A G | - | Accountant, CCN |

appeared to respond to queries raised in the special audit report -

MIN. NO. 614/2012 SPECIAL AUDIT REPORT

The Committee sought to know the following:-

- (i) How did the City Council of Nairobi settle on commercial bank financing?
- (ii) Full Council resolution/approval for the loan?
- (iii) Ministerial approval for the loan?
- (iv) Intended purpose for the loan?
- (v) What was the interest rates charged and why the high interest rates charged by the bank?
- (vi) Basis for negotiation fee?
- (vii) The process of procuring the loan from banks?
- (viii) Terms of the contract agreement?
- (ix) How were the waivers on interest charged by statutory bodies obtained?

The Committee was briefed as follows:-

- (i) The City Council sought a loan of Kshs 5 billion from seven of the large banks in Kenya (Equity, Standard Chartered, Barclays, Co-operative, KCB, National Bank and Citi Bank) only six responded and it was only two banks that gave concrete proposals (Equity and Co-operative) responded to the Council proposal. The Council decided to split the loan into two Kshs 3 billion from co-operative and 2 billion from equity bank. Co-operative Bank later declined citing that LATF would be stopped with the transition to County governance in line with the new constitution. The Council also engaged IFC but their conditions were not favourable and the council could not meet them.
- (ii) The Council decided to get a loan following a Ministry of Local Government directive that all councils should clear all outstanding debts owed to statutory bodies before receiving LATF. The City Council of Nairobi could not clear all its outstanding statutory debts from its revenues and therefore the idea of financing the debts so as to receive LATF.
- (iii) The loan from equity saved the council the punitive interest rates and penalties charged on defaulters by the statutory creditors. To this end the decision to take the loan was prudent. After receipt of the loan the Council paid the principle amount of the statutory debts and negotiated for waivers in the interest charged by the statutory bodies.
- (iv) The City Council had signed a contract for 10% interest rate payable on the premium amount on a reducing balance but ended up paying 12% in the first 8 months (April – November) of the repayment with no written notification of the variation in interest rates as provided for in Clause 5.3 of the agreement. The bank further increased the interest rates to 24% starting December 2011 without the required notification. As per the agreement the council was to pay a principal

amount of Kshs 1 billion per year and accruing interest. The agreement further provided for the bank to revise interest rates at its discretion. As at 31/7/ 2012 the Council had paid interest totaling Kshs. 635, 032,858 million and a principal amount of over Kshs 1 billion

- (v) The Kshs 50 million negotiation fee by the bank was a prudential guideline from the Central Bank to commercial banks to charge as a provision on money lent ranging from 1-3%. The council bargained for 1% (Kshs 50 million) instead of the 2% offered by the bank
- (vi) The City Council had a full council resolution approving the loan as well as the Minister's approval as required by law
- (vii) The agreement for the loan was signed by the Mayor and the Town Clerk for the Council but the Council does not have the original contract agreement in its possession
- (viii) The Council expected to save Kshs 5.6 billion but this was not achieved due to the unfavorable economic conditions, nevertheless the council saved on the waivers on the interest and penalties. The Council also managed to access LATF. The waivers were achieved through negotiations with the statutory creditors after paying some money

The Committee observed that:-

- (i) The City Council of Nairobi could have paid the statutory debtors from its cash flow and negotiate for waivers on the interest charged instead of securing a loan and end up paying very high interest rates. The City Council had an escrow account at Equity Bank of Kshs. 500 million and all its revenue accounts were transferred to Equity Bank as security for the loan and hence the loan was risk free. The council could have used this to bargain for lower interest rates or even put a cap on the interest charged on the loan
- (ii) The build up amount of Kshs 500 million was not earning interest yet the loan was on high interest rates.
- (iii) The facility was not prudent
- (iv) The negotiation fee of Kshs. 500 million was not reasonable considering the financial position of the council that led it to seek a loan
- (v) The interest rates charged by the bank rose sharply (doubled) from 12% to 24% without justification.
- (vi) Approval by the Minister for the loan was granted on 1st April, 2011, way after the council had entered into an agreement with Equity Bank and secured the loan in contravention of Cap 265.
- (vii) The Town Clerk is the legal signatory of the all documents and contracts for the council and therefore the signing of the loan agreement by the mayor was in contravention of the law.
- (viii) The City Council does not have the original loan agreement. The council has poor record keeping and management system hence lack of important contract documents in its possession.
- (ix) The contract document is not registered with the Credit Reference Bureau as required by law. The Director of Legal Services at the council failed in his duty as the custodian of legal documents for the council and also in undertaking due diligence on the contract documents between the council and other parties.
- (x) The loans were borrowed for a specific purpose but were not utilized for the purpose for which the Ministerial approval was sought

The Committee resolved that the following documents to be availed on or before the next meeting -

- (i) Correspondence between banks and City Council on acceptance of the loan proposal
- (ii) Bank notification of variation in interest rates
- (iii) A comprehensive report on the Job description of all the heads of departments

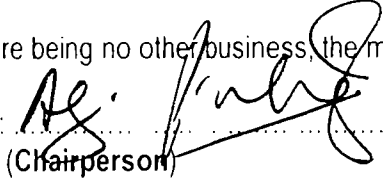
The Committee resolved to invite this Council again to conclude its pending evidence.

MIN. NO. 615/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at fifteen minutes past one O'clock

Signed:



(Chairperson)

Date:

27/9/12

MINUTES OF THE 200TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON TUESDAY, 28TH AUGUST 2012 IN 2ND FLOOR, COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

Hon. Benjamin Langat, MP - Vice Chairperson
Hon. Peter Mwathi, MP
Hon. Pollyins Anyango, MP
Hon. Charles M. Nyamai, MP
Hon. John Harun Mwau, MP
Hon. Wilson Litole, MP

ABSENT WITH APOLOGY

Hon. Thomas Mwadeghu, MP – Chairperson
Hon. Joseph Gitari, MP
Hon. Nemesyus Warugongo, MP
Hon. Abdul Bahari, MP

IN ATTENDANCE

Mr. Nicholas Emejen

KENYA NATIONAL ASSEMBLY

Clerk Assistant II

KENYA NATIONAL AUDIT OFFICE

Ms Elizabeth Nguringa - Deputy Director of Audit
Mr. Joshua Kereda - Deputy Director of Audit
Mr. George Otieno - Assistant Director of Audit
Mr. Tom Oketch - Assistant Director of Audit
Ms. Tabitha Waweru - Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Prof. Karega Mutahi - Permanent Secretary
Amb. P.R.O. Owade - Secretary, Local Government Administration

MIN. NO. 639 /2012

EVIDENCE: CITY COUNCIL OF NAIROBI

The special audit report on the City Council of Nairobi Kshs 5 billion loan from Equity Bank Limited.

Mr. Roba Duba, Town Clerk, City Council of Nairobi, accompanied by:

(i) Mr. Jimmy Kiamba - Treasurer, CCN
(ii) Mr. A. J. Owuor - Director, Legal Services CCN
(iii) Mr. Leboo Ole Morintat - Deputy Town Clerk, CCN
(iv) Mr. L. M. Gatimu - Chief Accountant, CCN

- | | | |
|------------------------|---|---------------------------------------|
| (v) Mr Daniel Mugo | - | Assistant Chief Accountant, CCN |
| (vi) Ms Nancy Kiruri | - | Assistant Chief Accountant (ACA), CCN |
| (vii) Mr Stephen Osiro | - | Deputy Treasurer, CCN |
| (viii) Mr Nyoike N | - | Ag. Chief Valuer, CCN |

appeared to respond to queries raised in the special audit report -

The Committee heard that the Chief Executive Officer, Equity Bank Limited had sent an apology and tasked senior bank officials to represent him at the meeting. The Committee observed that the invitation to the meeting was for the CEO and not other bank officials. The Committee deliberated on the matter and resolved that the bank officials be excused and that the CEO be invited again at a later date.

MIN. NO. 614/2012 SPECIAL AUDIT REPORT

The Committee sought to know the following:-

- (i) Was the money borrowed by CCN a loan or over draft?
- (ii) Did the Ministry take due diligence on the loan?
- (iii) What were the interest rates charged by the bank?
- (iv) Were there written notifications for variation in interest?
- (v) What was the nature of agreement between CCN and Equity Bank?
- (vi) Was the agreement registered with the relevant body?
- (vii) Did the council seek legal advice on the loan and was the agreement authenticated by the council lawyer?
- (viii) Who is the custodian of documents in local authorities and in the City Council of Nairobi?
- (ix) How were the waivers on interest charged by statutory bodies obtained by the council?
- (x) Did the Ministry take due diligence on the loan?
- (xi) Did the Ministry approve payment of other creditors without a schedule of the creditors?
- (xii) Whether the Council had entered into a debt swap agreement with its creditors?

The Committee was briefed as follows:-

(i) Payments

The City Council sought an approval for a loan from the Minister but from the circumstances the council ended up having a bank overdraft since no money was disbursed to the council's account but instead payment was made directly to the creditors and the council's account was debited. The first debit to the account was for Kshs 50 million negotiation fee and this was followed by a debit of Kshs 2.3 billion for LAPTRUST. Subsequently other creditors were paid and the account debited respectively.

In addition to the statutory creditors, payment of Kshs 862,093,238 was made to other creditors who had not been itemized during the request for ministerial approval. The Ministry in its approval letter had requested the council to validate the other creditors before payment. The Council hired Wachira Irungu and Company advocates to undertake a forensic audit of the other debtors. The report was finalized in July 2012.

The City Treasurer, Mr. Jimmy Kiamba, informed the Committee that ideally all payment by the Council ought to be approved /authorized by the Treasurer but some payments relating to the loan were made by the Deputy Treasurer without the knowledge of the Treasurer. He raised the matter with the then Town Clerk, Mr Philip Kisia,, who informed him that as the CEO he had the powers to delegate authority

The Council exhausted/utilized the Kshs 5 billion overdraft in May 2012 By 2nd May 2012 the council had a debit of Kshs 5, 309,922, 820 in its loan account

The council has not sold off or swapped any of its properties to settle the loan. In the past there were council resolutions for debt swap with statutory creditors. The Council still owes its statutory creditors

(ii) Procurement of the loan

The procurement for the loan was done prior to the approval to borrow was granted The council did not advertise for the procurement of the loan but instead wrote proposal to seven selected banks.

The City Treasurer informed the Committee that he was not involved in the process of securing the loan but instead it was the Deputy Treasurer, Margaret Osili who was involved in the procurement of the loan facility

(iii) Interest rates

The council operated an escrow account with equity bank The escrow account was not earning interest yet the over draft account was attracting high interest rates of upto 24%. An over draft ordinarily attracts more interest than loan. The interest charged on the loan/overdraft facility started at 12% and not the 10 % stated in the agreement without written notification.

(iv) Agreement

The Council had signed a letter of offer with Equity Bank Limited and not a loan agreement The letter of offer did not have dates when it was signed but this was left blank. The letter of offer was signed by Philip Kisia as the Town Clerk and George Aladwa as the Mayor for the City Council of Nairobi On behalf of Equity Bank Limited the letter of offer was signed by Dr. James Mwangi as the Managing Director & CEO and Mbaabu Muchiri as the Director - Credit.

(v) Legal advice

The Director of Legal Affairs, CCN Mr. A. J. Owuor informed the Committee that he was not consulted on the loan facility and therefore did not offer any legal opinion on the matter. The matter was however handled by his Deputy Mr. Wilberforce Wambulwa who has since been interdicted.

The custodians of the Council seal are the Mayor and the Clerk and are authorized to use the seal upon a resolution of the council.

The Permanent Secretary Ministry of Local Government informed the Committee that the failure by local authorities to remit statutory deductions started in the 1990's This has led to huge debts arising fro the principal amount as well as the interest charged on defaulters and penalties imposed

The Committee directed that the Council avails the following documents prior to the next meeting:-

- (i) List of the other creditors who were to be paid Kshs
- (ii) Forensic audit report of the creditors that was commissioned by the city council
- (iii) List of all the creditors that were paid from the loan money, the council should separate those who were in the original list that was approved by the Minister and those that were not in the approved list but were paid from the loan money - Treasurer
- (iv) List of court awards, the firms that were paid, reasons for payment, amounts paid, who authorized the payment and the signatories to the cheques/bank transfers – Director Legal
- (v) Summary of the payments on the overdraft showing the company paid, amounts paid, reasons for payment, authorizing officer and the signatories to the cheques/bank transfers - Treasurer.
- (vi) Copies of council resolution/minutes on the loan during the period 2010 to 2012 including resolutions accepting the interest rates by the bank.
- (vii) Bank statements on the loan account with equity with specific notes on the payments, council directives to pay and those paid by the bank.
- (viii) Minutes of the finance committee of the council discussing the high interest rates charged by the bank.
- (ix) Tabulation of the interest rate paid to LAPTRUST and other statutory bodies and its comparative to the bank rates.
- (x) Report on the council's compliance with the requirements in the letter of offer with regard to :-
 - Annexure I – conditions precedent documents
 - Annexure II – Security
 - Annexure III – Financial information

The Ministry was directed to provide the basis for the interest rates charged by the statutory bodies

MIN. NO. 640/2012

ANY OTHER BUSINESS

The Committee directed that, Mr Philip Kisia, Margaret Osili and Wilberforce Wambulwa, the persons under whose tenure the loan was procured and paid, be invited to a meeting on Tuesday September 04, 2012 to shed more light on the issues surrounding the Kshs 5 billion by the City Council.

MIN. NO. 641/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at Fifteen Minutes past One O'clock.

Signed: Date:

(Chairperson)

MINUTES OF THE 203RD SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON TUESDAY, 4TH SEPTEMBER 2012 IN THE MAIN CONFERENCE ROOM, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.30 AM

PRESENT

Hon. Thomas Mwadeghu, MP – Chairperson
Hon. Wilson Litole, MP
Hon. Charles M. Nyamai, MP
Hon. Joseph Gitari, MP

ABSENT WITH APOLOGY

Hon Benjamin Langat, MP
Hon. Abdul Bahari, MP
Hon. Pollyins Anyango, MP
Hon. Peter Mwathi, MP
Hon Nemesyus Warugongo, MP
Hon. John Harun Mwau, MP

IN ATTENDANCE

Mr Nicholas Emejen
Ms. Wanjiru Ndindiri

KENYA NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Ms. Elizabeth Nguring'a - Ag. Director of Audit
Mr. Joshua Kereda - Deputy Director of Audit
Mr George O Nashon - Assistant Director of Audit

MIN. NO. 648/2012

EVIDENCE: CITY COUNCIL OF NAIROBI

Prof. Karega Mutahi, CBS, Permanent Secretary, accompanied by:

(i) Amb. P.R.O. Owade - Secretary, Local Authorities Administration
(ii) Mrs. Ruth Kiiru - Director of Local Authorities Inspections
(iii) Mr. Patrick Karanja - Sr. Assistant Director, LAI
(iv) Ms. Margaret Osilli - City Treasurer, City Council of Kisumu
(v) Mr. Wilberforce Wambulwa - Former Deputy Director, Legal Affairs
(vi) Mr. Philip Kisia - Former Town Clerk

appeared to respond to queries raised regarding the Kshs. 5 billion loan obtained by the Council from Equity Bank

The Committee had observed with concern that the then Clerk appointed the deputies in the relevant departments to handle this transaction. These former officers had therefore been invited to provide further information on the processes surrounding acquisition of this loan.

MIN. NO. 649/2012

EVIDENCE FROM FORMER COUNCIL OFFICERS

The Committee heard from the former Town Clerk, Mr Kisia, former Deputy Treasurer, Ms. Osilli and former Deputy Director of Legal Affairs, Mr Boniface Wambulwa, regarding this transaction, and observed the following:

- a) All relevant offices were kept informed of the entire loan acquisition process and payments.
- b) All payments made to creditors from the Kshs. 5 billion loan were effected from the Treasurer's office. Furthermore, the Treasurer and Deputy Treasurer would meet every week to discuss all payments being processed for each week, the Treasurer was therefore aware of all the council's financial transactions.
- c) There were no minutes kept at these Tuesday meetings.
- d) The Town Clerk was also kept abreast of the issues every week, and would implement actions agreed upon by the Treasurer's department.
- e) The Ministry approved payment to NSSF, LAPTRUST, LAPFUND; KRA & NHIF were also paid among other creditors.
- f) The Council conducted a forensic debt audit to verify the actual creditors.
- g) The Director of Legal Affairs of the City Council was aware and advised the council on the loan agreement and contract.
- h) The auditors never received the original contract signed by the Council.

The Committee resolved to invite the Managing Director of Equity Bank to a follow-up meeting so as to conclude this matter.

The Council was also directed to provide a copy of the forensic audit done to verify the actual creditors

MIN. NO. 650/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at Forty Five minutes past twelve o'clock until Wednesday, 5th September 2012 at 11.00am.

Signed:
(Chairperson)

Date:.....

MINUTES OF THE 217TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON TUESDAY, 25TH SEPTEMBER 2012 IN THE MAIN CONFERENCE ROOM, COUNTY HALL, PARLIAMENT BUILDINGS AT 2.30 PM.

PRESENT

Hon. Thomas Mwachugu, MP – Chairperson
Hon. Peter Mwathi, MP
Hon. Pollyins Anyango, MP
Hon. Charles M. Nyamai, MP
Hon. Wilson Litole, MP
Hon. Joseph Gitari, MP

ABSENT WITH APOLOGY

Hon. Benjamin Langat, MP - Vice Chairperson
Hon. Nemesyus Warugongo, MP
Hon. John Harun Mwau, MP
Hon. Abdul Bahari, MP

IN ATTENDANCE

Mr. Nicholas Emejen
Ms. Wanjiru Ndindiri

-
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KENYA NATIONAL ASSEMBLY

Clerk Assistant II
Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Ms. Elizabeth Ngingira - Deputy Director of Audit
Mr. Joshua Kereda - Deputy Director of Audit
Mr. George Otieno - Assistant Director of Audit
Mr. Tom Oketch - Assistant Director of Audit
Ms. Tabitha Waweru - Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Prof. Karega Mutahi - Permanent Secretary

MIN. NO. 689/2012

EVIDENCE: CITY COUNCIL OF NAIROBI

The special audit report on the City Council of Nairobi Kshs 5 billion loan from Equity Bank Limited

Mr. Tom Odongo, Town Clerk, City Council of Nairobi, accompanied by:

(i) Mr. Jimmy Kiamba - Treasurer, CCN
(ii) Mr. Leboo Ole Morintat - Deputy Town Clerk, CCN
(iii) Mr. L. M. Gatimu - Chief Accountant, CCN

- (iv) Mr. Daniel Mugo - Assistant Chief Accountant, CCN
- (v) Ms. Nancy Kiruri - Assistant Chief Accountant (ACA), CCN
- (vi) Mr. Stephen Osiro - Deputy Treasurer, CCN
- (vii) Mr. Nyoike N. - Ag. Chief Valuer, CCN
- (viii) MS. Margret Osili - Treasurer, Municipal Council of Kisumu
- (ix) Mr. R. O. Moguko - Ag. DOP

appeared to respond to queries raised in the special audit report: -

The Committee was informed that the Chief Executive Officer, Equity Bank Limited had written requesting the committee for a rescheduling of the meeting since he was out of the country. The Committee deliberated on the matter and resolved that the bank officials the CEO be invited again at a later date.

The Committee heard that the Council does not have the original agreement documents at its possession. Further the Committee heard that the legal officer is the custodian of all documents except titles.

MIN. NO. 690 /2012

ANY OTHER BUSINESS

The Committee resolved that:-

- i) The City Council of Nairobi, Equity Bank Limited and EACC be invited on 8th October 2012 at 10.30 am.
- ii) Dates for the Committee inspection visit to County Council of Lamu and Malindi be decided once the House goes on recess.

MIN. NO. 691/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at thirty Five Minutes past Three O'clock

Signed: Date:.....
 (Chairperson)

MINUTES OF THE 226TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON WEDNESDAY, 10TH OCTOBER, 2012 IN COMMITTEE RM NO. 7, PARLIAMENT BUILDINGS AT 11.30 AM.

PRESENT

Hon. Pollyins Anyango, MP - Acting Chairperson
Hon. Joseph Gitari, MP
Hon. Charles M. Nyamai, MP
Hon. Abdul Bahari, MP

ABSENT WITH APOLOGY

Hon. Thomas Mwadeghu, MP – Chairperson
Hon. Benjamin Langat, MP
Hon. Wilson Litole, MP
Hon. Nemesyus Warugongo, MP
Hon. Peter Mwathi, MP
Hon. John Harun Mwau, MP

IN ATTENDANCE

Mr. Nicholas Emejen - Clerk Assistant II
Ms. Wanjiru Ndindiri - Clerk Assistant III

KENYA NATIONAL ASSEMBLY

KENYA NATIONAL AUDIT OFFICE

Ms. Elizabeth Nguring'a - Ag. Director of Audit
Mr. Tom O. Oketch - Assistant Director of Audit
Mr. Kennedy Mwaniki - Principal Auditor

MINISTRY OF LOCAL GOVERNMENT

Mrs. Rose Mburu - Regional Local Government Officer (Coast)

MIN. NO. 715/2012

EVIDENCE: MUNICIPAL COUNCIL OF MOMBASA

Abstract of accounts of the Municipal Council of Mombasa for the years ended 30th June 2004 to 30th June 2007.

Mr. Tubmun Otieno, Town Clerk, Municipal Council of Mombasa, accompanied by:

- (i) Mr. John Ngugi - Treasurer
- (ii) Mr. Edward Gichana - Chief Internal Auditor

MIN. NO. 716/2012

DEFERRED EVIDENCE

The Committee found this Council not fully prepared for the meeting, as the responses were only for the queries in the financial year 2006/2007 instead of covering all queries from the 2003/2004 to 2006/2007 accounts

The Committee therefore resolved to invite the Council for a follow-up meeting to conclude on its evidence at a later date.

MIN. NO. 717/2012

ANY OTHER BUSINESS

The Committee discussed its' schedule and resolved to clear all pending issues for the councils so as to write its report. The Committee will clear these pending issues next week, and review its programme on Thursday, so as to decide on a cut-off date for receiving evidence.

MIN. NO. 718/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at twenty five minutes past twelve o'clock until Thursday, 11th October 2012 at 10.00am.

Signed: ... HON. THOMAS MWADEGHU.....
(Chairperson)

Date: 01/12/2012.....

MINUTES OF THE 243RD SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON WEDNESDAY, 14TH NOVEMBER 2012 IN THE 5TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

Hon Benjamin Langat, MP – Ag. Chairperson
Hon. Charles M Nyamai, MP
Hon. Pollyins Anyango, MP
Hon Peter Mwathi, MP

ABSENT WITH APOLOGY

Hon Thomas Mwadeghu, MP – Chairperson
Hon. Wilson Litole, MP
Hon Joseph Gitari, MP
Hon Abdul Bahari, MP
Hon Nemesyus Warugongo, MP
Hon John Harun Mwau, MP
Hon. Moses Ole Sakuda, MP

IN ATTENDANCE

Ms Wanjiru Ndindiri

KENYA NATIONAL ASSEMBLY

Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Ms. Elizabeth Nguring'a
Mr. George O. Nashon
Mr Tom O. Oketch

- Ag. Director of Audit
- Assistant Director of Audit
- Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mrs. Ruth Kiiru

- Director, Local Authorities Inspectorate

MIN. NO. 762/2012

EVIDENCE: CITY COUNCIL OF NAIROBI

Abstract of accounts of the City Council of Nairobi for the years 2003/2004 and 2008/2009.

Mr. Tom Odongo, Town Clerk, accompanied by:

- (i) Mr. Leboo Ole Morintat - Deputy Town Clerk
- (ii) Mr. Jimmy Kiamba - City Treasurer
- (iii) Mr. Stephen Osiro - Deputy Treasurer
- (iv) Mr. Karisa Iha - Director, Legal Affairs
- (v) Mr. N.I. Nyoike - Ag. Chief Valuer
- (vi) Ms. Nancy Kiruri - Assistant City Treasurer
- (vii) Mr. Philip Kisia - Former City Clerk
- (viii) Mr. John Ngugi - Former City Treasurer

appeared to respond to queries raised in the accounts of the City Council of Nairobi for the years 2003/2004 and 2008/2009 as follows:

- Accuracy of the Financial Statements
- Going Concern
- Debtors/Receivables
- Non-Current Assets

MIN. NO. 763/2012

PENDING ISSUES

(i) Accuracy of the Financial Statements

In 2008/09, the Management did not explain the inconsistency noted in the figure reported of LATF in the Financial Statements. LATF budgeted for was Kshs. 1.729 billion, actual received was Kshs 1 704 billion. The Committee was informed that this difference was caused by penalties of Kshs. 20 million charged to the Council due to late submission of LATF returns. The remaining Kshs. 4 million was still in the Council's account. The Committee resolved that the then Chief Officers must be held responsible.

(ii) Going Concern

The Council operated on a negative working capital, hence threatening its sustainability. The Committee heard that the Council had a lot of outstanding debts totaling Kshs 13 billion, most of which was rates arrears.

Noting that there had been a much-publicized rates collection exercise, the Committee directed the Treasurer to provide the following information in the afternoon.

- (i) The targeted amounts for this collection exercise
- (ii) A list of the biggest defaulters
- (iii) Amount collected so far
- (iv) Amount used during the exercise for advertising

(iii) Non-Current Assets

The Committee heard that the Council did not maintain a Fixed Assets Register (FAR). The Committee noted that the Council only had a schedule of its assets. The Council explained that the absence of the FAR was due to lack of funds to conduct the asset valuation exercise. The Committee noted that the movable assets like vehicles and furniture could be valued separately and cheaper than the non-movable assets like land and buildings.

The Committee therefore directed the City Treasurer to value the movable assets and provide a status report on this in thirty days' time. The Council was also directed to take prepare itself to do a proper handover to the Transition Authority.

MIN. NO. 764/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at thirty minutes past twelve o'clock until later in the afternoon.

Signed: **HON. THOMAS MWADEGHU** Date: **01/12/2012**
(Chairperson)

MINUTES OF THE 244TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON WEDNESDAY, 14TH NOVEMBER 2012 IN THE 5TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 2.30 PM.

PRESENT

Hon. Benjamin Langat, MP – Ag. Chairperson
Hon. Charles M. Nyamai, MP
Hon. Pollyins Anyango, MP

ABSENT WITH APOLOGY

Hon. Thomas Mwadeghu, MP – Chairperson
Hon. Peter Mwathi, MP
Hon. Wilson Litole, MP
Hon. Joseph Gitari, MP
Hon. Abdul Bahari, MP
Hon. Nemesyus Warugongo, MP
Hon. John Harun Mwau, MP
Hon. Moses Ole Sakuda, MP

IN ATTENDANCE

Ms. Wanjiru Ndindiri

KENYA NATIONAL ASSEMBLY

Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Ms. Elizabeth Nguring'a - Ag. Director of Audit
Mr. George O. Nashon - Assistant Director of Audit
Mr. Tom O. Oketch - Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mrs. Ruth Kiiru - Director, Local Authorities Inspectorate

MIN. NO. 765/2012

EVIDENCE: CITY COUNCIL OF NAIROBI

Abstract of accounts of the City Council of Nairobi for the years 2003/2004 and 2008/2009.

Mr. Leboo Ole Morintat, Deputy Town Clerk, accompanied by:

(i) Mr. Jimmy Kiamba - City Treasurer
(ii) Mr. Stephen Osiro - Deputy Treasurer
(iii) Mr. Karisa Iha - Director, Legal Affairs
(iv) Mr. N. I. Nyoike - Ag. Chief Valuer
(v) Ms. Nancy Kiruri - Ag. Assistant City Treasurer

appeared to respond to queries raised in the accounts of the City Council of Nairobi for the years 2003/2004 and 2008/2009 as follows:

- Cash and Cash Equivalents
- General Fund Rates Billing & Income
- Payables/Creditors, Accruals & Provisions
- Parking Fees Revenue
- Unremitted Rates Collected By Lawyers

MIN. NO. 766/2012

PENDING ISSUES

(i) Cash and Cash Equivalents

The Committee heard that the Council did not properly maintain the Cash Books to enable accurate preparation of Bank Reconciliations Statements. The Council explained that it had now updated its cash book and recovering IOUs still outstanding. The Committee resolved to consider visiting the Council in two weeks' time to confirm if the records were being maintained as stated.

(ii) General Fund Rates Billing & Income

The Committee was informed that the Council's valuation roll had not been revised comprehensively for over thirty (30) years. Only piecemeal revisions had been done over the years. The Council explained there were plans in place to update the valuation roll, with a consultant set to begin the process in January 2013. The Committee directed the Council to apprise it on progress during the exercise.

(iii) Parking Fees Revenue

The Committee heard that there were towing fees collected by the Council of Kshs. 300 million. The Committee was not convinced on the accuracy of this figure, and requested the auditors to verify it from the Council records and report back to it.

(iv) Unremitted Rates collected by Lawyers

The auditors highlighted that it was not possible to ascertain the amount of debts collected via lawyers engaged by the Council. In addition, some debtors may have been irregularly written off. It was noted that defaulters made payments to the lawyers directly, but the Council had no procedure for following up on the status of these collections. The Committee directed the Council to provide an update of all the cases on rates that were still outstanding.

MIN. NO. 767/2012

ANY OTHER BUSINESS

The Committee reviewed its programme for the remainder of the month, with minor adjustments, and also resolved to go to Mombasa for its report-writing retreat from Thursday 29th November to 3rd December 2012

MIN. NO. 768/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at forty five minutes past four o'clock until Thursday 15th November 2012 at 10.00am.

Signed: *HUN ABUAGHA*
(Chairperson)

Date: *11/12/12*

MINUTES OF THE 245TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON THURSDAY, 15TH NOVEMBER 2012 IN THE 5TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

Hon. Benjamin Langat, MP – **Ag. Chairperson**
Hon. Pollyins Anyango, MP
Hon. Wilson Litole, MP

ABSENT WITH APOLOGY

Hon. Thomas Mwadeghu, MP – **Chairperson**
Hon. Peter Mwathi, MP
Hon. Charles M. Nyamai, MP
Hon. Joseph Gitari, MP
Hon. Abdul Bahari, MP
Hon. Nemesysus Warugongo, MP
Hon. John Harun Mwau, MP
Hon. Moses Ole Sakuda, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

Ms. Wanjiru Ndindiri - Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. Joshua Kereda - Deputy Director of Audit
Mr. Tom O. Oketch - Assistant Director of Audit

MIN. NO. 769/2012

EVIDENCE: MINISTRY OF LOCAL GOVERNMENT

Amb. P.R.O. Owade, Secretary, Local Authorities, accompanied by:

- (i) Mrs. Ruth Kiiru - Director, Local Authorities Inspectorate
- (ii) Mrs. Joyce Gichomo - Ag. Director, Human Resource Management

appeared to give evidence on cross-cutting issues raised by the Committee. It was noted that the Ministry officials were not fully prepared for the meeting. The Committee therefore resolved to reschedule the meeting for Thursday, 29th November 2012, so as to conclude on the issues raised previously. The Ministry is to therefore prepare and present a report on the following:

- a) Staff issues;
- b) LAIFOMS and other Information Technology (IT) issues;
- c) Financial issues;
- d) An update on payment of CILOR and Way Leaves;

- e) The fate of the staff in local authorities after the entry of county governments, and
- f) A report on the cross-cutting issues as earlier communicated.

MIN. NO. 770/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at five minutes past eleven o'clock until later in the morning.

Signed:

(Chairperson)

Date:.....

MINUTES OF THE 248TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON TUESDAY, 20TH NOVEMBER 2012 IN THE 5TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 9.30 AM.

PRESENT

Hon. Pollyins Anyango, MP – Ag. Chairperson
Hon. Wilson Litole, MP
Hon. Joseph Gitari, MP
Hon. Charles M. Nyamai, MP

ABSENT WITH APOLOGY

Hon. Thomas Mwadeghu, MP – Chairperson
Hon. Benjamin Langat, MP
Hon. Peter Mwathi, MP
Hon. Abdul Bahari, MP
Hon. Nemesysus Warugongo, MP
Hon. John Harun Mwau, MP
Hon. Moses Ole Sakuda, MP

IN ATTENDANCE

Ms. Wanjiru Ndindiri

-

KENYA NATIONAL ASSEMBLY

Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. Leonard Lari

-

Deputy Director of Audit

Mr. Hillary Murwa

-

Principal Auditor

MINISTRY OF LOCAL GOVERNMENT

Mrs. Ruth Kiiru

-

Director, Local Authorities Inspectorate

Mr. Kizito Kiguta

-

Regional Local Government Officer

MIN. NO. 777/2012

EVIDENCE: MUNICIPAL COUNCIL OF KISUMU

Abstract of accounts of the Municipal Council of Kisumu for the years ended 30th June 2003 to 30th June 2010.

Mr. Christopher O. Rusana, Town Clerk, Municipal Council of Kisumu, accompanied by:

- (i) Mr. Cephas Kasera - Deputy Treasurer
- (ii) Ms. Caroline Onjala - Internal Auditor
- (iii) Mr. Kephera Onoka - Accountant

appeared to give evidence on pending issues from the 2003/2004 to 2006/2007 accounts and on audit queries raised in the 2007/2008 to 2009/2010 accounts as follows:

- Outstanding Imprest
- Forensic Audit of Debtors
- Investments
- Non-Current Assets

MIN. NO. 778/2012

PENDING ISSUES

(i) Outstanding Imprest

The Committee heard that the Council had now reduced its outstanding imprest from Kshs. 9 million to Kshs. 2,662,994 and was continuing to make recoveries from the payroll. There was still one officer, Mr. George Obiny, the former surveyor, who owed Kshs. 724,000 which was still outstanding. The Committee directed the Clerk to give him one more month to make payment arrangements before starting to make deductions from his payroll monthly. The Clerk was also advised to contact the Institute of Surveyors of Kenya and the Institute of Land Survey Board to assist in recovering the money from this officer.

(ii) Forensic Audit of Debtors

The Committee heard that the Council had only done a valuation of its assets, not its debtors. The Council was directed to provide this valuation report from the auditor engaged by the Council to the Committee by 30 November 2012.

(iii) Investments

The Committee requested an update on the issue of Sunset Hotel, and was informed that the Ethics and Anti-Corruption Commission (EACC) was still pursuing recovery of the land. In addition, the Ministry of Lands was still working to revert the title back to the Hotel. The Committee resolved to write to the EACC for an update on this issue.

The Clerk was directed to prepare a better response on the issues raised in the 2007/2008 to 2009/2010 accounts and forward it to the Committee by the following week.

MIN. NO. 779/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at eleven o'clock until later in the morning.

Signed: HON THOMAS MWADEGHU Date: 01/12/2012.
(Chairperson)

MINUTES OF THE 250TH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON THURSDAY, 22ND NOVEMBER 2012 IN THE 5TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

Hon. Thomas Mwachugu, MP – Chairperson
Hon. Pollyins Anyango, MP
Hon. Joseph Gitari, MP
Hon. Charles M. Nyamai, MP

ABSENT WITH APOLOGY

Hon. Benjamin Langat, MP – Vice-Chairperson
Hon. Wilson Litole, MP
Hon. Peter Mwathi, MP
Hon. Abdul Bahari, MP
Hon. Nemesys Warugongo, MP
Hon. John Harun Mwau, MP
Hon. Moses Ole Sakuda, MP

IN ATTENDANCE

Mr. Nicholas Emejen
Ms. Wanjiru Ndindiri

KENYA NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Ms. Elizabeth Nguring'a - Deputy Director of Audit
Mr. Joshua Kereda - Deputy Director of Audit
Mr. George O. Nashon - Assistant Director of Audit
Mr. Tom O. Oketch - Assistant Director of Audit

MIN. NO. 783/2012

EVIDENCE: CITY COUNCIL OF NAIROBI & EQUITY BANK

Prof. Karega Mutahi, Permanent Secretary, Ministry of Local Government, and **Dr. James Mwangi**, Managing Director, Equity Bank, accompanied by:

- (i) Amb. P.R.O. Owade - Secretary, Local Authorities Administration
- (ii) Mr. Tom Odongo - Clerk, City Council of Nairobi
- (iii) Mrs. Joyce Gichomo - Ag. Director, Human Resource Management

appeared to give evidence on the Kshs. 5 billion loan advanced to the City Council of Nairobi for payments of statutory and other debtors.

MIN. NO. 784/2012

PENDING ISSUES

The following issues were noted during the discussions on this issue:

- i) The Council had not located its original copies of the documents relating to the loan.
- ii) The Bank had not been contacted by the Council or the auditors for assistance in getting copies of the relevant documents.
- iii) The Bank considered the accepted letter of offer as the agreement; there was no other agreement.
- iv) It was noted that despite the former Director of Legal Affairs in the Council, Mr. Aduma, stating in a past meeting that he had never seen any documents on the loan, the Bank confirmed that this director made amendments to the draft agreement.

The Committee recorded its disappointment with how this whole matter was handled, noting the Council's laxity and failure to resolve outstanding issues. The Committee therefore directed that:

- a) The Council should submit its original copy of the letter of offer and the agreement to the auditors by Monday, 26th November 2012 for verification.
- b) The officer who signed all the documents, Mr Joshua Aduma, should be summoned to appear at the next meeting set for Tuesday, 27th November 2012 at 9.30am.

MIN. NO. 785/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at forty minutes past eleven o'clock until Tuesday, 27th November 2012 at 10.00am.

Signed: HON. THOMAS MWADEGHU Date: 01/12/2012
(Chairperson)

MINUTES OF THE 251ST SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON TUESDAY, 27TH NOVEMBER 2012 IN THE 5TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 9.30 AM.

PRESENT

Hon. Thomas Mwadeghu, MP – Chairperson
Hon. Pollyins Anyango, MP
Hon. Joseph Gitari, MP
Hon. Wilson Litole, MP
Hon. Peter Mwathi, MP
Hon. John Harun Mwau, MP

ABSENT WITH APOLOGY

Hon. Benjamin Langat, MP – Vice-Chairperson
Hon. Charles M. Nyamai, MP
Hon. Abdul Bahari, MP
Hon. Nemesysus Warugongo, MP
Hon. Moses Ole Sakuda, MP

IN ATTENDANCE

Mr. Nicholas Emejien
Ms. Wanjiru Ndindiri

KENYA NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Ms. Elizabeth Nguring'a - Deputy Director of Audit
Mr. Joshua Kereda - Deputy Director of Audit
Mr. George O. Nashon - Assistant Director of Audit
Mr. Tom O. Oketch - Assistant Director of Audit

MIN. NO. 786/2012

EVIDENCE: CITY COUNCIL OF NAIROBI & EQUITY BANK

Prof. Karega Mutahi, Permanent Secretary, Ministry of Local Government, accompanied by:

- (i) Amb. P.R.O. Owade - Secretary, Local Authorities
- (ii) Mrs. Joyce Gichomo - Ag. Director, Human Resource Management

appeared to give evidence on the Kshs. 5 billion loan advanced to the City Council of Nairobi for payments of statutory and other debtors.

MIN. NO. 787/2012

PAPERS LAID

The following papers were laid on the table by Mr. Tom Odongo, Clerk, City Council of Nairobi:

- i) *Forensic audit done by Wachira Irungu & Associates to verify creditors in City Council of Nairobi*
- ii) *A provisional list of analysed debtors and creditors (without aging aspect) in the City Council of Nairobi.*

These documents were requested during deliberations on the Kshs. 5 billion loan advanced to the Council by Equity Bank.

MIN. NO. 788/2012

PENDING ISSUES

The Committee received submissions from the former officials in the Council's legal department on this Kshs. 5 billion loan.

The Committee heard the following:

- i) Mr. Aduma confirmed to the Committee that he saw the drafts of the sale agreement but never signed the final document. The official signing was done by the Clerk and witnessed by the Mayor.
- ii) Mr. Wambulwa, who was the then Deputy Director of Legal Affairs also stated that Mr. Aduma had the draft agreements in his office.
- iii) Mr. Kisia stated that all documents he signed would have gone through the legal department first. He is to provide a copy of the register showing incoming and outgoing movement of documents on this loan in his office.
- iv) The Council still had not provided all the documents requested in the last meeting.
- v) The Council paid Kshs. 4.1 billion to statutory creditors, and Kshs. 862 million remained. Out of this, Kshs 481 million was used to pay other creditors who were not on the original creditors' list approved by the Ministry.
- vi) The Bank stated that it received the application for the loan from the Council along with the Minister's approval, the list of statutory creditors to be paid, and the sundry creditors to be paid also, subject to a forensic audit.
- vii) The statutory creditors were paid direct, while payments to sundry creditors were released upon certification by the external auditor engaged by the Council, Wachira Irungu & Associates, represented by Mr. Tumbo.
- viii) According to Equity Bank, this loan was within the stipulated single-borrower limit of 25% set by the Central Bank.

The Committee noted that the Council appeared to be frustrating efforts to fully resolve this matter by not providing information requested.

The Committee directed the Council to finalize on the aging list of debtors and creditors that was required and forward it, plus all other missing documents to the auditors for verification.

The Committee invited the entire group of witnesses present to return for a follow-up meeting on Wednesday, 28th November 2012 at 11.00am.

And there being no other business, the meeting was adjourned at five minutes past twelve o'clock until Wednesday, 28th November 2012 at 11.00am.

Signed: HON THOMAS MWADEGHU Date 01/12/2012
(Chairperson)

MINUTES OF THE 252ND SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE HELD ON WEDNESDAY, 28TH NOVEMBER 2012 IN THE 5TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 11.00 AM.

PRESENT

Hon. Thomas Mwadeghu, MP – Chairperson
Hon. Benjamin Langat, MP – Vice-Chairperson
Hon. Pollyins Anyango, MP
Hon. Joseph Gitari, MP
Hon. Wilson Litole, MP
Hon. Peter Mwathi, MP
Hon. Charles M. Nyamai, MP

ABSENT WITH APOLOGY

Hon. Abdul Bahari, MP
Hon. John Harun Mwau, MP
Hon. Nemesyus Warugongo, MP
Hon. Moses Ole Sakuda, MP

IN ATTENDANCE

Mr. Nicholas Emejen
Ms. Wanjiru Ndindiri

-
-

KENYA NATIONAL ASSEMBLY

Clerk Assistant II
Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Ms. Elizabeth Nguring'a
Mr. Joshua Kereda
Mr. George O. Nashon
Mr. Tom O. Oketch

-
-
-
-

Deputy Director of Audit
Deputy Director of Audit
Assistant Director of Audit
Assistant Director of Audit

MIN. NO. 790/2012

EVIDENCE: CITY COUNCIL OF NAIROBI & EQUITY BANK

Prof. Karega Mutahi, Permanent Secretary, Ministry of Local Government, accompanied by:

- (i) Amb. P.R.O. Owade - Secretary, Local Authorities
- (ii) Mrs. Joyce Gichomo - Ag. Director, Human Resource Management

appeared to give evidence on the Kshs. 5 billion loan advanced to the City Council of Nairobi for payments of statutory and other debtors.

MIN. NO. 791/2012

PENDING ISSUES

The Committee received submissions from the Equity Bank and City Council officials on the Kshs. 5 billion loan and noted the following:

- i) The Bank lent the Council this money on the basis of future or potential revenues
- ii) The Council was to deposit money daily in an escrow account with the bank, which would serve as security, and assist the Council in managing its daily cash collections. The conditionalities on this account were requested by the Council.
- iii) The Council also had a separate current account in Equity Bank for its operations.
- iv) Initially, the escrow account had a Kshs. 900 million balance; however, this account was not bearing any interest.
- v) The Council was being charged interest on its current account when the balance was overdrawn, despite having excess cash in the non-interest bearing escrow account. In addition, Clause 7.5.8 of the agreement stated that the Council would not be charged interest if the balance was at an agreed maximum in the current account.
- vi) The interest rate charged on the loan began at 10%, increased to 15% in July 2011, then to 18% in October 2011, to 24% in November 2011 and is currently at 20%. The changes were occasioned by increases, and subsequent decreases in the Central Bank rate.
- vii) The Council needed a banker to advise them on how to properly negotiate with and invest their money.

The auditors were requested by the Committee to review the figures and compute the interest that the Bank should have paid the Council. The Committee further recommended that Equity Bank should pay the Council this amount.

MIN. NO.792/2012

ADJOURNMENT

And there being no other business, the meeting was adjourned at thirty five minutes past one o'clock until Thursday, 6th December 2012 at 10.00am.

Signed: **HON THOMAS MWADEGHU** Date: **01/12/2012**
(Chairperson)

ANNEX 2 – SPECIAL AUDIT OF CITY COUNCIL OF
KISUMU

Republic of Kenya



Kenya National Audit Office

SPECIAL AUDIT REPORT

OF

THE

AUDITOR-GENERAL

ON

**THE DEBTORS, CREDITORS AND
LOCAL AUTHORITIES TRANSFER FUND OF
THE MUNICIPAL OF KISUMU
FOR THE FOUR (4)
YEARS' PERIOD
ENDED
30 JUNE 2007**

2.0 Special Audit Results

2.1 Delaying Creditors

- (i) The Delaying (statutory) Creditors stood constant for the three (3) years' period ended 30 June 2007 at Ksh.513,666,611.00. However, no supporting documents were provided for the years 2003/2004 and 2004/2005.
- (ii) The NHIF balance documents totalling Kshs.190,330,748.00 were provided for 2005/2006 but the accuracy of the Other Delaying Creditors of Kshs.323,334,863.00 could not be determined due to lack of supporting documents.
- (iii) The details of the Delaying Creditors pertaining to the year 2006/2007 were provided but there was an overall overstatement by Kshs.313,917,104.60 which was not explained.
- (iv) Although the management reflected Kshs.91,352,284.00 in the 2006/2007 financial statements in respect of Local Authority Pension Trust Fund, the statement from the Local Authority Pension Trust showed a figure of Kshs.191,554,277.68, leading to an unexplained and unreconciled difference of Kshs.100,201,993.68.
- (v) The financial statements reflected a balance of Kshs.20,486,018.00 in the financial year ended 30 June 2007 in respect of National Social Security Fund while the relevant supporting documents from NSSF showed a balance of Kshs.258,817,099.00 as at 30 June 2007. The resultant difference of Kshs.238,331,081.00 was not explained or reconciled.
- (vi) The detailed analysis of the debit Net Suspense Account figure of Kshs.205,840,612.00 for the four (4) years ended 30 June 2007 was not provided.

2.2 Long Term Loans

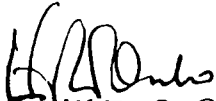
- (i) The Long Term Loans balances as per the audited Accounts stood at Kshs.758,105,477.00, Kshs.658,818,795.00, Kshs.228,803,088.00 and Kshs.661,138,841.00 for the years ended 30 June 2004, 2005, 2006 and 2007 respectively. However, the related supporting documents were not provided for audit review.
- (ii) The Accounts reflected Kshs.429,115,707.00 in respect of National Housing Corporation, while the supporting documents from the Corporation showed a figure of Kshs.480,815,284.00.

August 2011. However, no responses have been received to date. It has therefore not been possible to ascertain the actions taken, if any, to redress the issues raised.

3.0 Conclusion and Recommendations

- (a) The Special Audit revealed that the financial statements as at 30 June 2007 were misstated as follows:
 - (i) Liabilities (Creditors and Long Term Loans) were understated by Kshs.457,317,836.60.
 - (ii) Assets (Debtors) were understated by Kshs.563, 020,710.00.
 - (iii) The Net Suspense Account debit balance of Kshs.205,840,612.00 over a period of four (4) years' period ended 30 June 2007 was not supported or explained.

- (b) In addition, the following areas or issues are recommended for further investigations:
 - (i) Possibility of existence of secret bank account(s) at KMC over the 4 years period ended 30 June 2007; and
 - (ii) Related party transactions between Municipal Council of Kisumu and Kisumu Water and Sewerage Co. Ltd. (KIWASCO) to confirm bankings (payments by KIWASCO to Municipal Council of Kisumu) under dispute of Kshs.31,500,000.00 during the four (4) years' period ended 30 June 2007.


Edward R. O. Ouko
AUDITOR-GENERAL

Nairobi

25 October 2011

ANNEX 3 – VALUATION OF EMBAKASI (AIRFORCE
BASE) LAND BY MINISTRY OF LANDS



REPUBLIC OF KENYA
MINISTRY OF LANDS

Telegrams: "LANDS", Nairobi
Telephone: Nairobi 718050-9

When replying please quote

VAL.852/XII/VOL.IV/(132)

The Town Clerk
Nairobi City Council
P.O. Box 30075 -00100
NAIROBI

DEPARTMENT OF LANDS
1st NGONG AVENUE
OFF NGONG ROAD
P. O. Box 30089

NAIROBI

5th September 2012

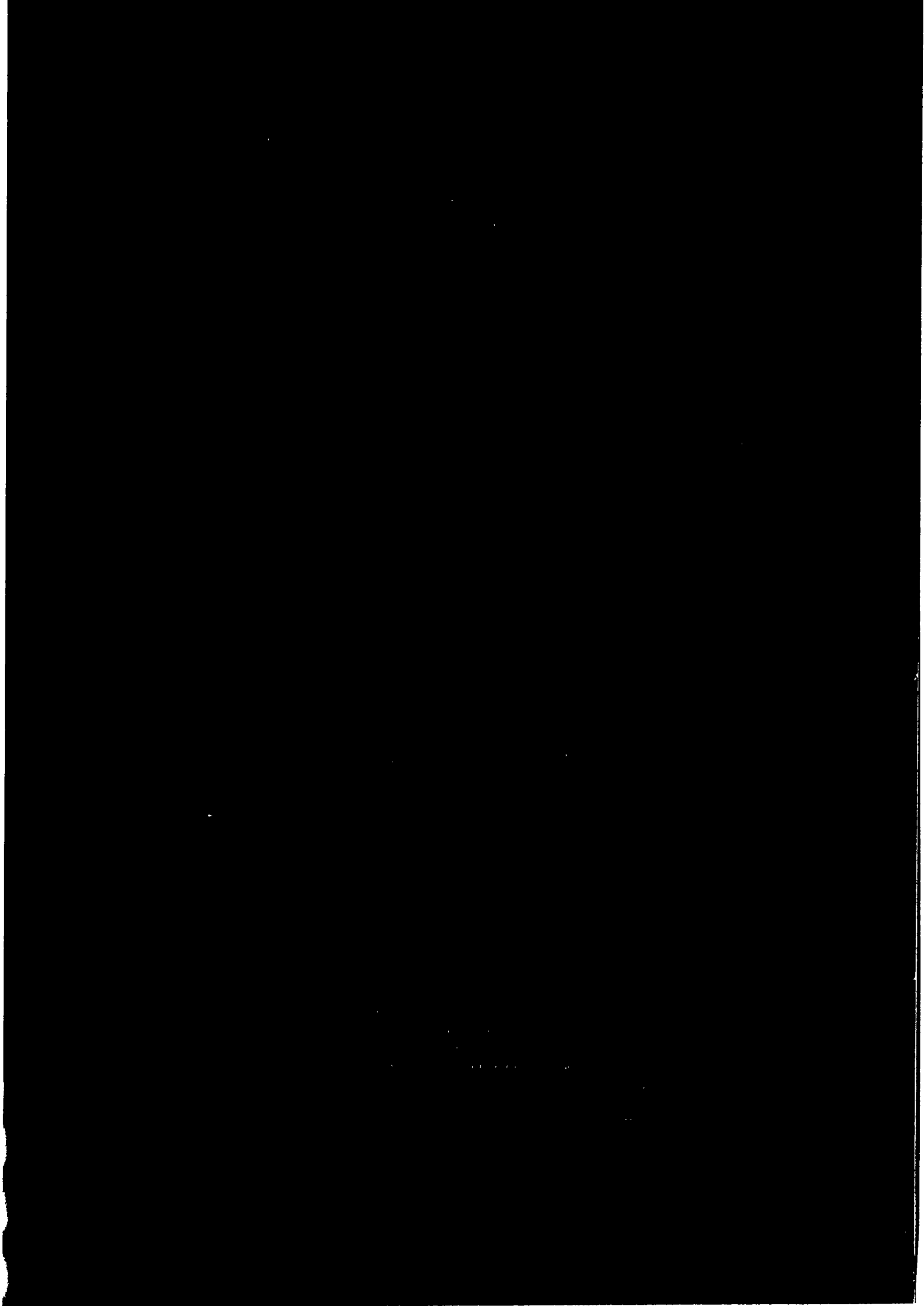
**VALUATION OF NAIROBI CITY COUNCIL LAND
OCCUPIED BY DEPARTMENT OF DEFENCE
LR NO. 11344 (PART) EMBAKASI - NAIROBI**

Reference is made to your letter Ref. VAL.649/4/24/5/NNI/JKM dated 19th July 2012 on the above.

The land LR 11344 (Part) measuring approximately 918.2Ha or 2268.872Acres has been valued at Kenya shillings Twenty two Billion Nine hundred million only. (Ksh.22,900,000,000/=).

The valuation is for open market value and assumes the status quo of the land at the time of take over without any roads and quarrying. (your letter ref. CPD/ADMIN/762/PNK/JSK dated 31st August 2012 is explicit).

ANNEX 4 - FORENSIC AUDIT OF SUNDRY
CREDITORS IN CCN



CC

Mr. Francis T. Kimemia, CBS
Permanent Secretary, Secretary to the
Cabinet and Ag. Head of the Public Service
Office of the President
NAIROBI

Hon. Prof. Githu Muigai EGH, FCI Arb, MP
Attorney General
Attorney General's Chambers
NAIROBI

Prof. Karega Mutahi, CBS,
Permanent Secretary,
Ministry of Local Government,
NAIROBI

Amb. Nancy Kirui, CBS
The Permanent secretary
Ministry of State for Defence
NAIROBI

EXECUTIVE SUMMARY

1. Introduction

The City Council of Nairobi has been reported to be indebted to a tune of over Ksh.30 billion. This has placed challenges in its financial management function in addition to having a distorted balance sheet with huge figures representing contingency liabilities. These contingent liabilities have been occasioned by among other factors, long-term loans ostensibly advanced by the Central Government and other foreign bodies with the approval of the government but whose contract documents are not available in the Council. There are also unsubstantiated claims for supplies some dating as far as ten years ago. Suppliers and contractors have also been seeking legal redress when their payments are delayed resulting to the Council incurring huge legal fees, decretal and taxed costs since she hardly wins a court case. Due to this history, and in the spirit of prudence principle of accounting, the Council makes huge provisions of payables which negatively affect its balance sheet. It is due to the foregoing that it has been found necessary to verify all Council debts with a view to establish the genuine ones and therefore remove any unnecessary baggage from the Council's books. The management of the City Council also appreciates the internally available resource in form of qualified accountants but wishes to seek the opinion of an external third party so as to obtain a highly objective opinion on the integrity of the existing debt.

2. Terms of Reference

Wachira Irungu & Associates were awarded the tender "Reference No. CCN/CT/RFP/197/2011-2012 Consultancy Services for Provision of Forensic Audit Services on 31st January 2012 and the following were the Terms of Reference (TOR).

- i) **Procurement process:** to establish whether the laid down public procurement regulations and procedures were followed in ordering the goods or services;
- ii) **Receipt and Consumption:** to establish whether the Council actually received and consumed the goods or services purported to have been offered;
- iii) **Time Factor:** to establish the effect of time factor between the time of ordering/contracting for the goods or services and the actual delivery of the same;
- iv) **Documentations:** to establish the availability and adequacy of all the necessary documentations to support the claim;
- v) **Computations:** to check whether the computations were accurate and fair, especially on litigation claims?
- vi) **Double Claims:** to check and ascertain that there were no cases of double claims.

Final Report – Consultancy Services for Provision of Forensic Audit and Verification of CCN'S Creditors

The issues outlined above were for guidance only. The Consultants were expected to exercise professional diligence such an exercise would demand, and not confine themselves to the outlined activities.

3. Schedule of Work

The exercise commenced with an entry meeting held on 8th February 2012 between the Consulting Team and key CCN staff, led by the Deputy City Treasurer (Administration). CCN provided the Consultants with an initial list of creditors and the relevant supporting documents for detailed review and verification. In addition, subsequent creditors' lists were availed to the Consultants as the verification exercise proceeded.

4. Key Findings and Challenges

4.1 Resumption of Stalled Services

At the time of the commencement of the exercise in early February 2012, CCN was not collecting parking fees for lack of ticket books. Some garbage collection companies had also stopped collecting garbage. The internet communication had been disconnected and the mortuary refrigeration required urgent repairs.

Consequently the suppliers of these services were verified as a priority and they were able to resume work within the first week of the audit exercise.

4.2 Verified and Approved Creditors

As at 24th April 2012 when the exercise was completed, we were able to verify and approve for payment creditors worth a total of Kshs 2,433,067,465 out of which Kshs 1,288,205,759 had been paid.

For control purposes Wachira Irungu & Associates were also co-opted as signatory to the Councils' Equity Bank Account.

4.3 Internal Control

The City Council of Nairobi's accounting system seem to have an elaborate internal control system, complete with an Internal Audit Department. There is also adequate segregation of duties. We however noted some instances where the controls were overridden by some City Hall officials which included:

- i) Payments being made even before the goods had been received;
- ii) Tendering process not properly followed as no competitive tendering process took place;

iii) Some recipient users being not prepared for the equipments procured.

A specific case is where an order to supply seven (7) cash safes was given to Ephra Enterprises and a payment voucher processed on the basis of a pro-forma invoice. Some of the markets for which the safes had been ordered did not also have proper revenue offices which could house a safe. These safes were only delivered to the general store when we queried this transaction.

4.4 Procurement

We noted some instances where the tender prices were significantly higher than the market price to justify the award of the tender and despite this discrepancy, the tenders were approved as the lowest.

One specific case in the tender for supplying seven (7) tanks to various rehabilitation centres which was awarded to Cami Contractors at the price of Kshs 700,000 per tank yet the average market price was Kshs 65,000. The tanks supplied were also of 8000 litres instead of 10,000 litres as ordered resulting to over-pricing by Kshs 4,445,000.

We recommend that periodic market surveys of the prevailing market prices of goods and services commonly used/procured by CCN to be carried out to ensure that all quoted prices are within an acceptable range.

4.5 Undelivered Goods and Services

We noted some instances where the services or goods for which claims for payments were being made had not been delivered. For example, Mugo Muhuri Road had not been repaired at all while Cosniprof Investments, the contractor had raised invoices and certificates requesting a payment of Ksh.1,257,562 which we could not approve for payment.

Some claims for payment by some law firms were also not genuine as there was no evidence that the cases had gone before a court or that indeed the best interest of the CCN had been represented in those cases.

Another case is that of Kyavee Holdings Versus the CCN. This case did not go to full hearing as the plaintiff's lawyer was said to be incompetent for lack of LSK certification and therefore withdrew the case.

Kyavee Holdings was claiming a compensation of Ksh.3,151,700,000 as decretal amount in the case, for loss of a property LR/No. 209/8254 which is Mariakani Primary School's playground that Kyavee Holdings claim to have been allotted by the CCN, but was later re-allotted to another person before Kyavee Holdings could put up a four star hotel on the said plot which according to them would have earned them that amount. However, the lawyer for the CCN M/s Wachira Mburu Mwangi and Company Advocates is still claiming payments of Kshs. 68,876,169 as legal fees based on the decretal amount. This plot was allotted to the school in

Final Report – Consultancy Services for Provision of Forensic Audit and Verification of CCN'S Creditors

1968 per the property file at the central registry and has never been subdivided, or re-allotted and therefore Kyavee Holdings had no claim on it.

This particular case appears to be irregular with the intention to defraud the CCN of the Kshs. 68,876,169 sought as legal fees by M/s Wachira Mburu Mwangi and Company Advocates.

Our recommendation is that this amount is not payable, and the law firm should refund the Kshs.10, 000,000 that has already been paid on account of this case.

4.6 Legal Creditors and Claims

The following cheques payable to Akide & Company Advocates were deemed not eligible for payment because of the following reasons:

Cheque number	Amount (ksh)	Remarks
43041	9,502,437	Negotiations between CCN officials, Akide and Company Advocates, Ministry of Local Government, LAPTRUST management and their lawyer, Kiplagat and Company Advocates were not tabled in the Finance Committee of the Council and adopted by the Full Council. This is a matter that was not heard in a Court of Law and the fee note of Ksh 80,000,000 demanded by the advocates is not justified.
43042	9,502,437	
039750	3,405,868	The case file was not provided and authorization by the Town Clerk was missing.
039747	101,250	The case file was not provided and authorization by the Town Clerk was missing.

4.7 Change in the Scope of the Work

We encountered a lot of hindrances in the course of the verification exercise as the listing initially provided to us for verification was subsequently changed with additional ones which broadened the scope of our work. Some of the additional creditors were in respect of services which had just been rendered which changed the objective of the exercise into an internal authorization process.

4.8 Files Retrieved from the Consultants

Final Report – Consultancy Services for Provision of Forensic Audit and Verification of CCN'S Creditors

In the course of the verification exercise, a list of creditors for roads rehabilitation of the Kshs 112,554,430 was submitted to the Consultants but later withdrawn before we had an opportunity to verify the same.

D.T. Dobie had also forwarded to CCN pro-forma invoices for the supply of two mercedez vehicles at a cost of Kshs 14,639,086 which were also withdrawn.

We however learnt later that payments were made even before proper verifications were carried out.

4.9 Interference from CCN Officials

During the verification exercise, a lot of interest was shown by some City Hall officials and Councilors in what the Consultants were doing, which interfered with our work. Some of these officials were the contact persons for the verification exercise but they ended up showing preferences in certain creditors being verified for approval of payment ahead of others. While this was initially taken as a worthy guidance to the Consultants, we soon realized that in some cases they had some vested interests defeating the overall objective of the exercise.

I. BACKGROUND

The City Council of Nairobi (CCN) was established under the Local Government Act CAP.265 of 1963, CCN'S mandate is to provide and manage basic social and physical infrastructure services to the residents of Nairobi. These services include basic education, housing, health, water and sewerage, refuse and garbage collection, planning and development control, urban public transport and fire services and fire brigade among others.

City Council of Nairobi has sixteen (16) departments all located in both City Hall and City Hall Annex building while the Housing Development Department is situated in Dandora Estate. The Council has also decentralized its operations into eight (8) divisions and the fifty five (55) wards.

1.1 Objective of the Consultancy Assignment

The overall objective of the forensic audit of CCN's creditors was to enable the Council carry in its balance sheet the liabilities that are genuinely payable and remove from the financial records the liabilities that are unfairly in the books. CCN also desire to pay the bona-fide creditors and avoid paying unscrupulous suppliers and contractors so that more money can be saved for service delivery to residents of Nairobi City, which is the Council's core activity.

The City Council of Nairobi has been reported to be indebted to a tune of over Ksh.30 billion. This has placed challenges in its financial management function in addition to having a distorted balance sheet with huge figures representing contingency liabilities. These contingent liabilities have been occasioned by among other factors, long-term loans ostensibly advanced by the Central Government and other foreign bodies with the approval of the government but whose contract documents are not available in the Council. There are also unsubstantiated claims for supplies some dating as far as ten years ago. Suppliers and contractors have also been seeking legal redress when their payments are delayed resulting to the Council incurring huge legal fees, decretal and taxed costs since she hardly wins a court case. Due to this history, and in the spirit of prudence principle of accounting, the Council makes huge provisions of payables which negatively affect its balance sheet. It is due to the foregoing that it has been found necessary to verify all Council debts with a view to establish the genuine ones and therefore remove any unnecessary baggage from the Council's books. The management of the City Council also appreciates the internally available resource in form of qualified accountants but wishes to seek the opinion of an external third party so as to obtain a highly objective opinion on the integrity of the existing debt.

The Council's vision is to be recognized as one of the most attractive cities of the world' while its mission is 'to facilitate coordinated development and improved service delivery to stimulate economic activity, high quality of life and become one of the most attractive cities of the world.' Finance is the lifeline of any institution and therefore its management is critical.

1.2 Scope of the Assignment

The verification will be carried out on the lists of creditors to be provided by CCN. The creditors' verification exercise will inter-alia address the following issues:

- vii) **Procurement process:** establish whether the laid down public procurement regulations and procedures were followed in ordering the goods or services;
- viii) **Receipt and Consumption:** establish whether the Council actually received and consumed the goods or services purported to have been offered;
- ix) **Time Factor:** establish the effect of time factor between the time of ordering/contracting for the goods or services and the actual delivery of the same;
- x) **Documentations:** establish the availability and adequacy of all the necessary documentations to support the claim;
- xi) **Computations:** Check whether the computations were accurate and fair, especially on litigation claims?
- xii) **Double Claims:** Check and ascertain that there were no cases of double claims.

The issues outlined above were for guidance only. The firm doing the verification was expected to exercise professional diligence such an exercise would demand, and not confine themselves to the outlined activities.

1.3 Expected Outputs/Deliverables

The Consultants would provide weekly lists of audited and verified and approved creditors to the Town Clerk's office for processing of the payments. The Consultants would provide an Interim Report midway through the execution of the assignment. In addition, on conclusion of the assignment, the Consultants will prepare and submit to CCN a final forensic audit report containing the audit findings and recommendations and how to overcome the identified weaknesses, avenues and opportunities for occupational errors, fraud and other irregularities.

2. APPROACH AND METHODOLOGY

2.1 Schedule of Work

The exercise commenced with an entry meeting held on 8th February 2012 between the Consulting Team and key CCN staff, led by the Deputy City Treasurer (Administration). CCN provided the Consultants with an initial list of creditors and the relevant supporting documents for detailed review and verification. In addition, subsequent creditors' lists were availed to the Consultants as the verification exercise proceeded.

2.2 Approach and Methodology

During the field audit, the Consulting Team performed analytical and substantive audit procedures in order to obtain sufficient competent evidence through review of the creditors listings, study of the relevant supporting documents and reports, observations, inspection of assets, goods supplied and work performed, inquiries, interviews and discussions with CCN staff, confirmations, review of Council minutes and policy documents, internal audit reports, legal files, operational and accounting records, financial statements and organization structure. The Consultants used a variety of appropriate and lawful investigative audit techniques and resources, including:

- i) Review of the CCN's internal control and accounting system with regard to creditors, policy documents and any relevant background materials;
- ii) Ensuring that there were adequate, sufficient and acceptable supporting documents for the amounts claimed including original invoices, contracts/agreements, LPOs, Delivery Notes, Goods Received Notes and other relevant documents;
- iii) Review of CCN's procurement policies and procedures to determine whether the same were in accordance with the Public Procurement and Disposal Act, 2005 and the Regulations 2006 and sound commercial practices including competition was used, reasonable prices were obtained and adequate controls were in place over the qualities and quantities received;
- iv) Review of the contract documents with contractors, consultants and suppliers of goods to confirm their validity;
- v) Carried out physical verification of the goods supplied and works performed to ensure that they were actually received/performed and were in accordance with the LPOs/contracts;
- vi) Review of the Council's Finance Committee and the Full Council minutes for any evidence of disputed liabilities;
- vii) Review of the internal audit reports and legal files with regard to the outstanding creditors' claims, and the recommendations or opinions thereof.

2.3 Site Visits and Physical Verification

The Consultants visited the various stores and most of the sites where physical works had been carried out including repairs of roads, installation of street lights and public lighting, supply of furniture and other items to schools, health facilities etc to confirm that the work was actually carried out or goods actually received and were in accordance with the LPOs/contracts.

3. KEY AUDIT FINDINGS AND CHALLENGES

3.1 Resumption of Stalled Services

The Consultants treated verification of suppliers of essential services to the City Council of Nairobi as a priority and approved those payments requests that satisfied the criteria for approval. For example, at the time of commencement of the exercise in early February 2012, CCN was not collecting parking fees for lack of parking ticket books. In addition, some garbage collection companies had also stopped providing this vital service. Consequently, the suppliers of these services were verified as priority and the services resumed within the first week of the audit exercise. The prioritized creditors included the following:

CREDITOR	SERVICE RENDERED
Jeskar Enterprises	Garbage Collection
Junjo Commercial Agencies	Garbage Collection
Kamumu Bins	Garbage collection
Punchline Limited	Accountable Documents (Revenue tickets, etc)
Xtranet Communications	Internet Service Provider
Cooperative Insurance Company Ltd	Insurance Services
Geff Refrigeration Company	Mortuary Refrigeration

The services provided by these companies are essential to the proper operation of the City Council of Nairobi and for the general good of the residents of the City of Nairobi as whole.

3.2 Regular Listings of Verified and Approved Creditors

In the course of the verification exercise, we were able to analyze the information contained in the list of creditors presented to us and the accompanying documents and make records of our findings on a specific case basis leading to either approval for payment, request for additional information, authorization, or outright rejection of a request for payment where there was no evidence of work done or goods supplied, or where the work or supplies did not comply with the contract agreement between the CCN and the supplier or contractor.

After this analysis the Consultants were able to make regular reports in accordance with the TOR in form of a list of creditors approved for payment. As at 24th April 2012, the Consultants had verified and approved for payment creditors worth a total of Kshs 2,433,067,465 out of which Kshs 1,288,205,759 had already been paid. For control purposes, Wachira Irungu and Associates were co-opted as a signatory to the Council's Equity Bank account.

The following is a summary of the verified and approved creditors eligible for payment and the payments made as at that date:

Final Report – Consultancy Services for Provision of Forensic Audit and Verification of CCN'S Creditors

3.2.1 Summary of creditors verified and approved for payment.

Date Of Approval	Number of Claims	Amount (Kshs.)
15 th Feb, 2012	673	1,488,220,510
20 th Feb, 2012	49	112,111,791
23 rd Feb, 2012	41	64,091,815
28 th Feb, 2012	45	118,936,771
1 st March 2012	36	55,017,967
2 nd March 2012	18	46,568,314
7 th March 2012	26	47,968,956
14 th March 2012	17	56,254,854
26 th March, 2012	24	69,699,029
3 rd April, 2012	24	69,720,644
12 th April, 2012	36	118,589,390
14 th April, 2012	22	54,733,112
18 th April, 2012	25	78,988,865
20 th April, 2012	15	52,191,147
TOTAL	1031	2,433,093,165

3.2.2 Summary of payments by EFT

Month	Amount (Kshs)
February 2012	712,137,091
March 2012	300,982,389
April 2012	224,531,922
May 2012	22,996,801
TOTAL	1,260,648,203

3.2.3 Summary of payments by bankers cheques

Month	Amount (Kshs)
January 2012	2,651,332
February 2012	11,842,295
March 2012	6,142,700
April 2012	5,925,780
May 2012	995,449
TOTAL	27,557,556

Detailed analysis of the above are included in this report as appendices.

3.3 Internal Controls

The City Council of Nairobi's accounting system seem to have an elaborate internal control system, complete with an Internal Audit Department. There is also adequate segregation of duties. However, we noted some instances where the controls were overridden by some City Hall officials. For example, an order to supply seven (7) cash safes had been given to Ephra Enterprises and a payment voucher had been raised on the basis of a pro-forma invoice. This had effectively overridden the controls in that:

- i) The payment was being prepared even though the goods had not been received;
- ii) The tendering process had not been followed as no competitive tendering process took place;
- iii) The recipient users were not prepared for the equipment, and some markets for which the safes had been ordered did not have proper revenue offices which could house a safe.

CCN was running at the risk of losing all the money paid for the safes in the event that they were never supplied. In fact it was only when we queried this transaction that the seven safes were supplied to the general store and invoices raised.

3.4 Supporting Documents

Overall most of the payment vouchers in respect of General Fund creditors were properly supported. We however noted an instance where a payment voucher and cheques amounting to Kshs 2,299,304 were made to One Two One Communications without supporting documents. The supporting documents were only availed when we queried this payment.

Other cases queried and not approved for payment were:

Creditor's Name	Amount Kshs	Remarks
Bakiri Enterprises	1,917,000	Our visit to Mahiga Primary School revealed that the job had not been completed
Sido General Contractors	22,144,322	The invoice value was higher than the certificate of work issued.
Jomo Kenyatta University	115,000	No approval letter to attend training from the CCN

3.5 Compliance with PPDA 2005 and PPDR 2006

Some of the procurements done did not fully comply with the Public Procurement and Disposals Act of 2005, and Regulations 2006. For example, the order issued to Ephra Enterprises was not taken through the tendering process, and the payment voucher had also been prepared on the strength of a proforma invoice.

Final Report – Consultancy Services for Provision of Forensic Audit and Verification of CCN'S Creditors

Most of the suppliers were pre-qualified and therefore did not meet the requirements for open tendering since most of them had not been publicly advertised.

We also noted some instances where the market prices and the tender prices were too wide to justify the award of the tender. A specific example is Cami Contractors Limited whose price of water tanks was almost ten (10) times higher than the market price. The tanks supplied were also of lower capacity than had been ordered. The following are the details:

Particulars	Quantity	Capacity (litres)		Price (Kshs.)	Total cost Kshs.
Tanks ordered	7	10,000	Invoice Price	700,000	4,900,000
Tanks supplied	7	8,000	Average Market Price	65,000	455,000
Difference	-	2000	Over-Pricing	635,000	4,445,000

Despite the discrepancy above, the tender quotation had been approved as the lowest. CCN therefore lost Kshs 4,445,000 in this transaction.

The CCN might be buying most of its goods and services at exaggerated prices because there are no strict procedures for comparing the quoted prices and the prevailing market prices. The personnel in the tender committees may not know much about the goods or materials being sought, or there might have been collusion between the suppliers and the Procurement Committees' members.

We recommend that periodic market surveys of the prevailing market prices of goods and services commonly used/procured by CCN be carried out. Alternatively CCN could obtain the market prices survey data from Public Procurement Oversight Authority (PPOA) which could provide a very useful guide on the expected range of price variances.

3.6 Undelivered Goods and Services

We noted some instances where the services or goods for which claims for payments were being made had not been delivered at all. For example, Mugo Muhuri Road had not been repaired at all while Cosniprof Investments, the contractor had raised invoices and certificates requesting a payment of Ksh.1,257,562 which we could not approve for payment.

Some claims for payment by some law firms were also not genuine as there was no evidence that the cases had gone before a court or that indeed the best interest of the CCN had been represented in those cases. For example, in the case of Goodtimes Investments against the CCN, the lawyers for the plaintiff (Eboso & Company Advocates) are apparently not members of LSK, raising questions as to how the case could have gone to court.

Final Report – Consultancy Services for Provision of Forensic Audit and Verification of CCN'S Creditors

Another case is that of Kyavee Holdings Versus the CCN. This case did not go to full hearing as the plaintiff's lawyer was said to be incompetent for lack of LSK certification and therefore withdrew the case.

Kyavee Holdings was claiming a compensation of Ksh.3,151,700,000 as decretal amount in the case, for loss of a property that Kyavee Holdings claim to have been allotted by the CCN, but was later re-allotted to another person before Kyavee Holdings could put up a four star hotel on the said plot which according to them would have earned them that amount. However, the lawyer for the CCN M/s Wachira Mburu Mwangi and Company Advocates is still claiming payments of Kshs. 68,876,169 as legal fees based on the decretal amount. Other facts that made this claim highly irregular was that; (i) the property in dispute LR/No. 209/8254 is the Mariakani Primary School's play ground which was allotted to the school in 1968 per the property file at the central registry and has never been subdivided, or re-allotted and therefore Kyavee Holdings had no claim on it. (ii) Furthermore, Kyavee Holding does not exist as a registered company and therefore had no power to sue the CCN. (iii) the Internal Audit Department while querrying the claim had asked for the allotment letters. Our request for the list of case files under investigation by KACC did not also bear much fruit.

The case file further reveals that the company was a stranger to the contract, if any existed, between the CCN and the person who claimed to have been allotted the property.

This particular case appears to be irregular with the intention to defraud the CCN of the Kshs. 68,876,169 sought as legal fees by M/s Wachira Mburu Mwangi and Company Advocates.

Our recommendation is that this amount is not payable, and the law firm should refund the Kshs.10, 000,000 that has already been paid on account of this case.

In our interim report, we indicated that there were some other claims that did not pass the Consultant's tests and were therefore not approved. However they were later verified and approved for payment after clarification.

3.7 Legal Creditors and Claims

Verification of legal claims provided a challenge as it required intense study of the case files and various references to confirm the validity of those claims. The Consultants were however guided by the facts of each case and the urgency of the matter where direct court ruling existed. Some of the cases required reference to the Court Registry, and where technical issues of ascertaining a claim arose, the Consultants were guided by CCN's Procurement and Legal Departments in relation to the lawyers' remuneration orders relevant to the specific case. Of the greatest use was reference to the Law Society of Kenya (LSK) to confirm the validity of the lawyers' practicing certificates.

In our interim report, the lawyers listed below were not cleared for several reasons but have since been cleared after the Consultants were provided with the information and the required documents.

Final Report – Consultancy Services for Provision of Forensic Audit and Verification of CCN'S Creditors

Name of Law Firm	Amount Claimed Kshs	Reason For No Approval
G. N. Gichuhi Ngari & Co. Advocates	74,043	The case was dismissed for non - attendance of the lawyer of the plaintiff hence the amount found eligible for payment.
C. W. Ngala & Co. Advocates	9,500,000	The subject of the case was explained by the Legal Department and found to be eligible for payment.
Ell Omotti & Co. Advocates	6,064,802	The subject of the case was explained by the Legal Department and found to be eligible for payment.
Asiema & Co. Advocates	2,236,988	By the time of the court ruling, it was established that the lawyer had a practicing certificate.
Goodtimes investments (Eboso & Co. Advocates)	4,500,000	By the time of the court ruling, it was established that the lawyer had a practicing certificate.
D. B. Wati & Company Advocates	6,418,181	The subject of the case was explained by the Legal Department and found to be eligible for payment.
Nelson Harun & Co. Advocates	7,079,400	By the time of the court ruling, it was established that the lawyer had a practicing certificate.

However, in the following cases we were not provided with adequate documentations and the recommendation in the interim report remains the same.

Name of Law Firm	Amount Claimed Kshs	Remarks
Okong'o Omogeni & Company Advocates	1,083,950	Fee note amount do not agree with amount per the payment voucher. Amount per the payment voucher being higher than the fee note.
Wachira Mburu Mwangi & Company Advocates	48,761,169	(i).The plaintiff lawyer withdrew the case. They should meet the costs. (ii). Kyavee Holdings does not exist as a registered company. (iii). The dispute property (LR. No. 209/8254) is a school playground belonging to Mariakani Primary School which was allocated in 1968 and has never been subdivided.

The following cheques payable to Akide & Company Advocates were deemed not eligible for payment because of the following reasons:

Final Report – Consultancy Services for Provision of Forensic Audit and Verification of CCN'S Creditors

Cheque number	Amount (ksh)	Remarks
43041	9,502,437	Negotiations between CCN officials, Akide and Company Advocates, Ministry of Local Government, LAPTRUST management and their lawyer, Kiplagat and Company Advocates were not tabled in the Finance Committee of the Council and adopted by the Full Council. This is a matter that was not heard in a Court of Law and the fee note of Ksh 80,000,000 demanded by the advocates is not justified.
43042	9,502,437	
039750	3,405,868	The case file was not provided and authorization by the Town Clerk was missing.
039747	101,250	The case file was not provided and authorization by the Town Clerk was missing.

3.8 Change in the Scope of the Work

We encountered a lot of hindrances in the course of the verification exercise as the listing initially provided to us for verification was subsequently changed with additional ones which broadened the scope of our work. Some of the additional creditors were in respect of services which had just been rendered. This also had the effect of changing the objective of the exercise into an internal authorization process.

During the exercise, the Council had stopped payments of all creditors unless they were approved by the verification team. This was not as per the Terms of Reference (TOR) but we had to verify them so as to keep vital services such as, revenue collection, and garbage collection which had stalled because of none payment to printers of revenue tickets and garbage collectors to continue operating.

3.9 Files Retrieved from the Consultants

In the course of the verification exercise, a list of creditors for roads rehabilitation of the Kshs 112,554,430 was submitted to the Consultants but later withdrawn before we had an opportunity to verify the same.

D.T. Dobie had also forwarded to CCN pro-forma invoices for the supply of two mercedez vehicles at a cost of Kshs 14,639,086 which were also withdrawn.

We however learnt later that payments were made even before proper verifications were carried out.

In our interim report we mentioned that some case files listed as below were also withdrawn purportedly to extract some papers that were needed by KACC for investigation purposes. The files were however returned to us and action taken as appropriate.

- i) Nelson Harun & Co. Advocates;
- ii) Okongo Omogeni & Co. Advocates and
- iii) Wachira Mburu Mwangi & Co. Advocates.

Our request for the list of all case files under investigation by KACC however did not bear any fruit.

3.10 Interference from CCN Officials

During the verification exercise, a lot of interest was shown by some City Hall officials and Councilors in what the Consultants were doing, which interfered with our work. Some of these officials were the contact persons for the verification exercise but they ended up showing preferences in certain creditors being verified for approval of payment ahead of others. While this was initially taken as a worthy guidance to the Consultants, we soon realized that in some cases they had some vested interests.

The verification room was also not fully out of bound to City Hall officials and even Creditors following up their payments, who often provided important information on their claims. We however became apprehensive when a voucher that we had rejected disappeared from the verification room. This voucher related to Cami Contractors who had been awarded a contract to supply and install seven water tanks at various rehabilitation centers at a total amount of Kshs 4,900,000. Only one voucher for Kshs. 2,800,000 had been presented to the Consultants for verification. However upon visiting the site, we noted some discrepancies in this project and also queried the amount being demanded as their prices were almost ten (10) times higher than the market price.

We however found out later that this payment voucher had been removed from the verification room. On the other hand, the payment voucher for the balance of Kshs 2,100,000 was not presented to us at all for verification and approval.

→ To our surprise and utter disbelief we discovered only too late that both payment vouchers were processed and approved outside CCN's currently laid down creditors' verification and payment system and sneaked into the EFT forms and paid in complete disregard of our objection to the validity and propriety of the procurement transaction, thereby defeating our efforts to avert an irregular payment.

ANNEX 5 - CHANGAMWE ESTATE RESIDENTS'
GROUP



CHANGAMWE ESTATE RESIDENTS' GROUP

P. O. Box 93669-80102 Mombasa
Tel: 0722 384744, 0724 944 468, 0733 793054
Email: ceragr96@yahoo.com

7th March, 2012

To: THE CHAIRMAN,
LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE,
Thru. CLERK OF THE NATIONAL ASSEMBLY,
CLERKS CHEMERS,
P.O.BOX 41842-00100
NAIROBI.

Dear Sir,

**RE: MISAPPROPRIATION OF MOMBASA MUNICIPAL COUNCIL'S
EMPLOYEES PENSION FUNDS AND ILLEGAL SALE OF NE CHANGAMWE
HOUSING ESTATE**

We wish to express our disappointment regarding the handling of our complaint by your committee in connection of the above mentioned issues.

We are of the opinion that justice has not been done to us as you have not given us the opportunity to be heard by your committee.

Hence, we are hereby requesting to be allowed to appear before your parliamentary committee so us to give our side of the story.

Sir, we strongly believe that you shall accord us this opportunity and we trust that you shall prove to be fair arbitrators.

Among the issues that we would like to be answered are as follows:

1. The reason why the Municipal housing tenants' associations were not invited to the Stakeholders meetings held on the 14th and 19th September 2011 to review the rates and rents or any consultative forum with the Tenants.
2. Why the Municipal Council did not advertise the sale of the estate in public media and did not offer first priority to the tenants of the estate, most of who have lived in the houses for over 30 years?
3. Why is the Council not willing to release to us information and details regarding the circumstances pertaining to the transaction of the sale of the New Changamwe Estate to the LAPTRUST despite our request to them in accordance to Article 35 of the Constitution of Kenya?

4. Why has the Council not come out clean on the issue of misappropriation of their employees pension fund deductions and non remittance to LAPTRUST yet it constitutes a committal of crime? Is that not impunity?
5. Why should the public bear the brunt for the deliberate **corruption** and **incompetence** of the officers of the Council? We invoke Article 22 and 35 of the Constitution of Kenya to be allowed access to information on the LAPTRUST Account so as to institute legal proceedings against the Council, the Ministers for Local Authorities and LAPTRUST in public interest.
6. Why did the Council take five months to notify the tenants about the transfer thereby rendering the tenants in to the burden of house rent arrears and causing trauma and dismay in our community which includes widows, orphans and elderly people?
7. Why is the Council privatizing a public asset without following the due process as stipulated in the Constitution and without regard to the human rights of the Tenants?
8. Why has the Minister for Local Authorities refused to respond to the two Memorandums which we wrote and delivered personally to him late last year? Don't we deserve response from him?
9. Why have the Council and LAPTRUST colluded and instantly, even without notice they have raised the house rent of New Changamwe by over 150%?

(Refer to Kenya Gazette Notice Number 441 of 13th January 2012).

We earnestly look forward to your invitation.

Yours faithfully,


Beldine Odono
SECRETARY


Jimmy Odari
CHAIRMAN