REPUBLIC OF KENYA

COUNTY GOVERNMENT OF MACHAKOS

COUNTY ASSEMBLY OF MACHAKOS

Email: assemblymks@gmail.com
Along MwatuwaNgoma Rd
P O Box 1168 – 90100
MACHAKOS – KENYA

THIRD ASSEMBLY

SECOND SESSION (02)

REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF COUNTY EXECUTIVE OF MACHAKOS FOR YEAR ENDING 30 JUNE 2021

BY THE

PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE

SEPTEMBER, 2023

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EXECUTIVE SUMMARY

Hon Speaker, this report on the Financial Statements of County Executive of Machakos for the year ended 30 June 2021 was received in the Assembly pursuant to Article 229 (7) of the Constitution. The report was committed to Public Accounts and Investments committee pursuant to Standing Order No. 185 (2) (b) and (c) and the report had a qualified opinion.

The key queries raised on the part for basis for the qualified opinion include differences between Financial Statements and Integrated Financial Management Information System (IFMIS) Ledger, unsupported payments, undisclosed assets Inherited from Defunct Local Authorities, pending bills, lack of land ownership for water facilities, unsupported legal expenditures, queries related to non-compliance and matters on internal controls and risk management among other queries**.**

The Committee while exercising its mandate scrutinized the queries and raised key observations such as technical problems that affected the IFMIS system, lack of disclosure of information, non-comprehensive inspection reports, use of outdated valuation roll that has disadvantaged revenue collection from property, late disbursement of funds that affect bank balance and service delivery, good progress in payment of pending bills, lack of formal agreements for water facilities in the County, unnecessary engagement of private legal firms, non-compliance of relevant laws and un finalized policies.

In order to address the issues raised from the particular queries the committee recommends some key measures such as involvement of the National Treasury to address the recurring IFMIS failures, forwarding to the Auditor General any unverified and undisclosed information, recruitment of County Valuers and Planners to match the Departmental needs, clearance of payment for pending bills that have the required documentations, formalizing ownership of land with county water facilities, implementation of logical measures by the County Public Service Board to address the huge wage bill and forwarding to the Assembly for approval all the pending policies among other recommendations.

1.0 INTRODUCTION

1.1 Preface

1. Honorable Speaker, pursuant to Article 229 (7) of the Constitution, Section 32(1) and 39(1) of the Public Audit Act, 2015, the report on Financial Statements of County Executive of Machakos for the year ended 30 June 2021 was received in the Assembly. The report was committed to Public Accounts and Investments Committee for interrogation and reporting as provided under Standing Order 185 (2) (b) and (c) that states that "*the Public Accounts and Investments Committee shall be responsible for examination of reports, accounts and workings of the County Public Investments and whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.*"

1.2 Committee Membership

2. Hon. Speaker, the Committee comprises of the following Honorable members;

    1. Hon. Philiph Ndolo – Chairperson
    2. Hon. Ruth Wanjiru – V/Chair
    3. Hon. Raphael Lucky
    4. Hon. Charles Mbuva
    5. Hon. Douglas Mutinda
    6. Hon. Paul Muoki
    7. Hon. Caroline Mutuku

Secretariat;

1. Mr. Luke Maingi - Clerk Assistant
2. Mr. Patrick Muange - Clerk Assistant
3. Mr. Joseph Mutiso - Hansard

1.3 Background information

3. Hon. Speaker, the Audit report on the Financial Statements of County Executive of Machakos for the year ended 30 June 2021 was received in the Assembly in February 2022 pursuant to Article 229 (7) of the Constitution that states that *Audit Reports shall be submitted to Parliament or the relevant County Assembly.* It is good to note that the Auditor General observed the legal timelines as provided under Section 48 (1) of the Public Audit Act 2015 that requires the Auditor General to audit and report on accounts audited six (6) months after the end of the fiscal year in question.
4. On receipt of the audit report, it was committed to Public Accounts and Investments committee pursuant to Standing Order No. 185 (2) (b) and (c) and the report had a **Qualified opinion**. This means the financial Statements present fairly and comply with thePublic Finance Management Act, 2012 and the County Governments Act, 2012.
5. The Committee on Public Accounts while exercising its mandate as provided in Standing Order 185 invited the Accounting Officer and conducted interrogation on the audit report on 23rd March 2022. This is as per the provisions of Article 226(2 of the Constitution that provides that *the Accounting Officer of a County public entity is accountable to the County Assembly for its financial management.*
6. Hon. Speaker, it is also important to note that the year 2022 was a year of government transition. Further, the Committee has a huge backlog of received audit reports hence it was difficult for the Committee to keep the required timelines.

2.0. GUIDING LEGAL FRAMEWORK

7. Hon. Speaker, in the execution of its mandate the Committee was guided by core Constitutional and Statutory Laws on public finance management below:

2.1. The Constitution

8. (i) Article 201(a)(d)(e) provides that

(a) *there shall be openness and accountability, including public participation in financial matters;*

(d) *public money shall be used in a prudent and responsible way; and*

(e) *financial management shall be responsible, and fiscal reporting shall be clear.*

(ii) Article 226(2) of the Constitution states that the accounting officer of a county public entity is accountable to the county assembly for its financial management

(iii) Article 229 (5) of the Constitution provides that "*the Auditor-General may audit and report on the accounts of any entity that is funded from public funds.*"

(iv) Article 229 (8) of the Constitution states that "*within three months after receiving an audit report, the parliament or the County Assembly shall debate and consider the report and take appropriate action.*

2.2. The Public Audit Act 2015

9. (i). Section 47 (1) provides that the financial statements required under the Constitution, the Public Finance Management Act, 2012 (No. 18 of 2012) and any other legislation, shall be submitted to the Auditor-General within three months after the end of the fiscal year to which the accounts relate.

   (ii). Section 48 (1) states that within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on the accounts specified in Article 229 of the Constitution

2.3 County Assembly of Machakos Standing Orders

10. Standing Order 185 mandates the Committee on Public Accounts and Investments to examine reports, accounts and workings of the County Public Investments

3.0. THE AUDIT QUERIES AND MANAGEMENT RESPONSES

11. Hon. Speaker, Section 48 (1) of the Public Audit Act, 2015 states that *within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on the accounts specified in Article 229 of the Constitution*. In adherence to the said provision, the Auditor General audited the financial Statements of County Executive of Machakos and disclosed audit matters below.

12. Further, the Accounting Officer in observance of Article 226(2) of the Constitution that provides for accountability of Accounting Officers to County Assembly provided responses to each of the queries as outlined below.

3.1 Difference between Financial Statements and Integrated Financial Management Information System (IFMIS) Ledger

13. The financial statements for the year under review reflect amounts which differ with the Integrated Financial Management Information System (IFMIS) ledger balances. The variances as tabulated below, were not explained, or reconciled.

Item	Reference	Financial Statements Kshs.	IFMIS Trial Balance Kshs.	Variances Kshs.
Exchequer Releases	Note 1	8,804,699,313	5,000,000.00	8,799,699,313
Compensation of employees	Note 11	5,602,656,468	1,400,775,166	4,201,881,302
Use of goods and services	Note 12	1,107,121,078	287,097,834	820,023,244
Acquisition of assets	Note 17	1,187,849,365	296,871,469	890,977,896
Bank Balances	Note 21A	1,173,251,315	-1,828,449,455	3,001,700,770
Cash Balances	Note 21B	0	-650,528,182	650,528,182
Accounts Receivables	Note 22	0	510,004,655	-510,004,655
Accounts Payable	Note 23	146,792,047	52,394,348,476	-52,247,556,429
Fund Balances C/F Forward	Note 24	913,751,861	-52,263,619,544	53,177,371,405

14. Consequently, the accuracy and validity of the financial statements for the year ended 30 June, 2021 could not be confirmed.

3.1.1 Management Response

15. The financial statements are correct as per actual payments done and actual receipts. All payments were processed through the IFMIS system. The general ledger module did not

however post the transactions from the other modules correctly I.e. the accounts payable (AP Module) and accounts receivable (AR Module). A reconciliation has been done after identifying items that caused the difference.

3.1.2 Committee Observation

i. The figures in the financial statements for the various entries listed in the table above vary from the corresponding values in the Ifmis statement. The Accounting Officer confirmed that the figures in the financial statement for all the entries are correct and the variation noted from the Ifmis statement was as a result of Ifmis technical problem that leads to posted figures failing to reflect in it. On inquiring, the auditor confirmed to the committee that this is a national problem which the National treasury was addressing.
ii. It was also noted that reconciliations for the figures was done to correct the variations but they were NOT forwarded to the auditor for verification

3.1.3 Committee Recommendation

i. The copy of reconciliations that were presented to the committee should be forwarded to the Auditor for verification to enable closure of the query if at all the Auditor will be satisfied.
ii. That the Department of Finance should quickly address the matter on IFMIS challenge with the National Treasury so that the system error is addressed. Further, such challenges should be well documented and reported to the Auditors during the interrogation exercise for consideration.

3.2 Misstatement of Bank Balance

16. The statement of assets and liabilities reflects bank balance as at 30 June 2021 amounting to Kshs.1,173,251,315 and as disclosed under Note 21A to the financial statements. Review of the supporting bank reconciliations statements and cashbooks revealed that the balances included receipts and payments made in July, 2021 totaling to Kshs.2,612,147,616 and Kshs.3,554,210,415 respectively resulting in misstatement in bank balance by Kshs.942,062,799 as shown below:

A/C NO.	NAME	Receipts for July Kshs.	Payments for July Kshs.	Net Misstatement
1000170468	Recurrent	850,810,582	898,003,258	(47,192,676)
1000170506	Development	521,368,373	522,971,784	(1,603,411)
10001707512	Revenue	1,229,379,584	2,133,135,903	(903,756,319)
10001228229	Deposit	10,589,077	99,470	10,489,607
Total		**2,612,147,616**	**3,554,210,415**	**(942,062,799)**

17. Inclusion of subsequent years' transactions was contrary to the provisions of Regulations 97(1) of The Public Finance Management (County Governments) Regulations, 2015, which stipulates that, 'Accounts of County Governments entities shall record transactions which take place during the financial year from 1st July to 30 June and Section 97(4) which provides that, actual cash transactions taking place after 30 June, shall not be treated as pertaining to that particular year.
18. In the circumstances, the accuracy of bank balances as at 30 June 2021 could not be confirmed.

3.2.1 Management Response

19. *The County's financial statements cut-off date was 20th July 2021, this was occasioned by disbursement of funds from the National Treasury which were credited to the County's CRF on various dates during the month of July 2021. These funds were requisitioned together with Own Source Revenue to pay transactions relating to FY 2020/2021 budget and therefore the figure amounting to Ksh. 2,612,147,616 could not be excluded and therefore no financial misstatements. An extract of CRF statement is attached.* ***(Appendix 2)***

3.2.2 Committee Observation

i. The Committee confirmed that the variation in the bank balance which is supposed to be read as at 30 June in the financial year in question was occasioned by late disbursement of funds that were received and paid in July contrary to Regulations 97(1) of The Public Finance Management (County Governments) Regulations, 2015.

ii. The committee also noted that this is a nation wide problem facing all the Counties where funds meant to be received and spent before the cut off date of June are disbursed by the National Government after the end of June in July.

iii. The misstatement of the balance raised by the Auditor was occasioned by the National Treasury late disbursement and not the mistake of the county executive.

3.2.2 Committee Recommendation

20. The National Treasury should adhere to the provisions of Public Finance Management by releasing funds in the required time because the continued late disbursement is occasioning poor service delivery, unintended pending bills and unwarranted audit queries.

3.3 Unsupported Payments

21. The statement of receipts and payments reflects use of goods and services expenditure amounting to Kshs 1,107,121,078. The expenditure includes Kshs. 23,618,845 incurred on routine maintenance-Vehicles and other transport equipment. Review of expenditure incurred on repairs of motor vehicles revealed payments amounting to Kshs. 2,384,317 which were not supported by a pre-inspection report indicating required repairs to the motor vehicles and post repair inspection certificates or reports.
22. Consequently the accuracy, validity and value for money from the expenditure on repairs of motor vehicles amounting to Kshs 2,384,317 could not be confirmed

3.3.1 Management Response

23. The management has provided defects, pre-inspection and post repair inspection reports for the motor vehicles for audit verification**.**

3.3.2 Committee Observation

i. On inquiry from the Accounting Officer the committee noted that the inspection reports were provided to the Auditor during the audit time but they were not satisfactory and this was confirmed by the Auditor during the interrogation.

3.3.3 Committee Recommendation

i. The amended inspection reports and any other relevant documents raised in the query should in the next 7 days of approval of this report be forwarded to the Auditor for verification.

ii. The Accounting Officer during the audit time should fully disclose all information to auditors during the time of audit pursuant to Section 9 (1) (e) of the Public Audit Act, 2015, that gives the Auditor unrestricted access to all required information and books to avoid unnecessary issues from appearing as queries.

3.4 Undisclosed Assets Inherited from Defunct Local Authorities

24. Annex 5 to the financial statements containing a summary of the non-current assets register reflects Kshs.13, 711,418,924 in respect of historical cost of assets owned by the County Executive of Machakos as at 30 June, 2021. However, the assets cost excluded assets of undetermined value which were inherited from defunct local authorities in the County. Further, the County Government did not have in its possession title deeds, log books and other ownership documents for the parcels of land, motor vehicles and other property for the inherited assets.
25. Consequently, the accuracy and ownership of the asset as at June, 2021 not be ascertained.

3.4.1 Management Response

26. *The Intergovernmental Relations Technical Committee (IGRTC) handed over the report in August 2019. In the report it was established that the listed assets had no corresponding values. The county government has initiated the process of valuation as per the attached IGRTC report and the gazette notice.*
27. *The County Government has also in the third quarter of F/Y 2021/2022 embarked on identification and verification of public land. This is being done in partnership with the National Government, National Land Commission (NLC) and the County Registrar. To this end the Department of Lands and Physical Planning has developed a draft Public Land Assets register.*
28. *The department has embarked on the development of a county valuation roll which will inform the correct and current value of the public land assets in the county. The valuation process is phased and piloted in Mavoko and is being jointly implemented by the County and Ministry of Lands and physical planning, Nairobi.*

3.4.2 Committee Observation

29. i) This Query has recurred as an audit Query since 2018 and the progress of settling the matters raised here have been occasioned by;

a) The County through the Intergovernmental Technical Committee in its report was able to document all the assets of the County but the assets lacked valuation. This implies that the County Government cannot collect revenue from unvalued assets.

b) Challenges in Valuation because the County Government of Machakos is very understaffed. The County has no Valuers, has only 3 Physical Planners and 4 Surveyors compared to Makueni which has 21 Planners and 14 surveyors. Kitui has 20 Planners and 16 Surveyors (*Report given by Chief Officer, Lands during CIDP Interrogation*). The Department has all through sought assistance from the National Government when undertaking valuation assignments.

c) The Valuation process needs a budget and insufficient funds have been a challenge in the Department of Lands as reported by the Chief Officer, Dept. of Lands after inquiry.

ii). The valuation matrix (*a rating formular for property*) currently used is outdated and this has disadvantaged valuation of property and subsequently disadvantaging revenue collection through under collection of property rates.

iii). The County government is making progress in identification and verification of public land within the County to enable acquire land ownership documents raised in the query but this process has been very slow.

3.4.3 Committee Recommendation

i. The County Government of Machakos should in the next financial year allocate sufficient funds to facilitate preparation of updated valuation roll and to recruit enough County Valuers, Physical Planners and Surveyors. This will help speed up the process of developing valuation roll and securing of public land and ownership documents raised in the query.

ii. The Department of Finance pursuant to Section 53 of Public Audit Act should in the next 90 days avail to the Assembly the status report of implementation of valuation roll, securing of public land and acquiring of ownership documents. This will help conclude this Query that has recurred since 2018.

3.5 Pending Bills

30. Notes 7.9(1),(2),and(3) to the Financial statements on other important disclosures reflect pending bills amounting to Kshs.2,601,430,721, Kshs.106,588,035 and Kshs.93,119,550 in respect to accounts payable, staff payables and other payables respectively all totaling Kshs.2,801,138,206. Review of annexes 2, 3 and 4 to the financial statements revealed bills totaling Kshs. 567,799,600 which had been outstanding for more than one year. Further, the annexes reflect retirement benefits contributions amounting to Kshs. 28,051,833 recovered from employees by the County Executive. No satisfactory explanation was given for failure to prioritize the pending bills during the year considering that the County Government had a bank balance of Kshs. 1,173,251,315 as at 30 June, 2021.
31. Had the pending bills been settled and the expenditure charged to the respective votes during the year, a deficit of Kshs.1,785,322,075 would have been reported instead of a surplus of Kshs.1,015,816,131 which is shown in the financial statements.

3.5.1 Management Response

32. *The County Government endeavors to clear all pending bills. The retirement benefits of Kshs. 28,051,833.00 was owed by the defunct local authorities and the county government is awaiting the report of ITGRC. The county executive has written a letter to LAPTRUST requesting for a waiver of the 3% interest levied on that outstanding balance. The current outstanding pending bills amount to Ksh.2,572,233,982 down from the outstanding amount of Ksh.2,801,138,206 as at 30th June 2021. The county executive is now within the recommended 20% of the Revenue budget of Kshs 12,042,687,076.00. The County Government has progressively paid Ksh.786,313,184 leaving a balance of Ksh. 153,879,712 out of the verified Kshs 942,362,606.00 which will be paid in due course.* ***(Appendix 5).***

3.5.2 Committee Observations

i. The Committee notes that this Query has also recurred since 2018 and that part of the outstanding debts is from defunct local authority (retirement benefits) and out of the total verified outstanding debts, the County Government is making progress in payment.

ii. The Committee was notified that this matter is part of the assignment for the Pending Bill task force which the Governor instituted and so the Accounting Officer informed the committee that valid recommendations from the report were expected.

3.5.3 Committee Recommendation

i. The recommendations of the Pending Bills committee which relate to this query should be implemented pursuant to PFM, Act that assigns priority to pending bills when it comes to payment.

ii. The County Government of Machakos should allocate funds in phases (per financial year) from the next financial year to clear the above verified outstanding pending bills and within each financial year in question appraise the Assembly with a status report on progress of payment of this pending bill.

3.6 Misstatement in Returned CRF Issues

33. The Statement of receipts and payments reflects Kshs. 521,756,806 in respect of returned County Revenue Fund (CRF) issues. Included in the amount as disclosed in Notes 10 to the financial statements is Kshs. 433,461,904 representing the bank balance in the County Revenue Fund account balance does not form part of the returned CRF issues in accordance with Section 136(1) and (2) of the Public Finance Management Act ,2012. Further, the statement of receipts and payments is overstated by Kshs. 433,461,904.

34. In the circumstances, Returned CRF issues and total receipts for the year under audit are overstated by Kshs. 433,461,904 for the year ended 30 June, 2021.

3.6.1 Management response

35. *The Public Sector Accounting Standards Board template stipulates that the closing balance in the County Revenue Fund should be indicated as Part of returned CRF issues in the following financial year (It forms part of the opening balance in the following financial year). Hence the Kshs433, 461,904 which is the bank balance in the CRF should form part of the Returned CRF issues as per the attached template.* ***(Appendix 6).***

3.6.2 Committee Observation

i. The Committee noted that Section 136(1) and (2) of the Public Finance Management Act, 2012 and the Public Sector Accounting Standards Board template are NOT in agreement if whether bank balance in the CRF should form part of returned CRF or not.
ii. The Auditor confirmed that the Public Sector Accounting Standards Board template was received and the department was in compliance hence the issue has been resolved.

3.6.3 Committee Recommendations

i. The Finance department for the purpose of future audits reports should always liaise with the Auditor during the audit process to avoid unnecessary audit queries appearing in the final report because if the same template was availed in time, the issue would have been resolved and the query dropped.

3.7 Lack of Land Ownership for Water Facilities

36. The statement of receipts and payments reflects Kshs. 1,187,849,365 in respect of acquisition of assets as further disclosed in Note 17 to the financial statements. The expenditure includes two payments amounting to Kshs. 117,569,359 and Kshs. 11,200,000 in respect of construction of Kyeleni earth dam and Muri Farm water treatment plant whose contracts were awarded during the year for Kshs. 117,569,358 and Kshs. 18,057,600 respectively.
37. Further, during the year under review, the County Government drilled a total 19 boreholes using its own resources. Documents provided in respect of the dams revealed that Machakos Executive had over the years constructed 4 water treatment facilities, 374 earth dams and sunk 633 boreholes. However, details and documents such as plot numbers and tittle deeds for the land where the water facilities constructed were located to approve ownership of the land were not provided for review. The management explained that these facilities sit on the private land, raising concerns regarding existence of those facilities and their security while on private land where they are said to be located.
38. In the circumstances, the existence, ownership and value for money incurred on the projects could not be confirmed.

3.7.1 Management Response

39. *On 16th September 2016 Muka Mukuu Farmers Co-operative society wrote to the Machakos County Department of Water and Irrigation indicating a list of 13no. Public utility land parcels that had been set aside for public use, that is construction of: Schools, Health Centers, play grounds, cattle dips and Dams of which the site for kyeleni earth dam was one of them under parcel no. Ol Donyo Sabuk/ Ol Donyo Sabuk west block 1/2594 – Kikuyuni dam. The land is of 1.873 Hectares in size and an official land search is attached of which transfer is underway.*
40. *(b) Implementation of all Government Projects are usually community needs driven, which are identified during Public Participation and done on public land. Attached are sample documents of Implemented projects.*
41. *(c) Treatment Plant are constructed on existing large public dams within the land which had already been procured by the national government e.g., Muthetheni Earth Dam in Muthetheni Ward, Muumaandu Earth Dam in Kola ward and Muri farm in Ndithini Ward.*
42. *(d) Most of Boreholes are developed on public land such as public schools, Hospitals, Churches etc. However, there are some few boreholes drilled on private land. There are times ground water is not available in the above public institution and is found in a nearby private land. In such a case, the county government enters into an agreement with the private land owner to avail land for borehole drilling to the nearby community after which; public participation and* consent*/ transfer for the piece of land is done to the government.*
43. *(e) The County Government department of Water always works closely with WRA (Water resources Authority) and NEMA (National Environment Management Authority) to ensure that the projects been undertaken meet the required Environmental and social standards. Attached find a sample of WRA authorization for the projects undertaken by the department.*

3.7.2 Committee Observations

i. The Committee noted that there are a number of water facilities that were built on private land because public land was not available. In such cases, an agreement between the land owner and the County Government was made and sample copies of the agreement were availed.
ii. That though agreements were made, transfer of the queried parcels of land had not been concluded hence the ownership of the facilities could not be substantiated. This puts risk on allocation of public resources and also risks attracting unnecessary legal issues.

3.7.3 Committee Recommendations

i. The Accounting Officer should forward to the auditor all the documents supporting the ownership of the parcels of land on which the questioned 4 water treatment facilities, 374 earth dams and 633 boreholes were done.
ii. The County Government should formalize the agreement for the facilities that were constructed in private land to curb possible conflict in resource usage by community members.

3.8 Unsupported Legal Expenditure

44. Note 12 to the financial statements reflect other operating expenses amounting to Kshs 293,767,716 during the year under review. The amount includes Kshs. 175,768,131 incurred on legal expenses and related costs.
45. Review of documents relating to the legal expenses revealed the following anomalies:
    The County legal office engaged the services of several firms to provide legal services without the approval of the Attorney-General or the County Executive committee in contravention to the Office of Attorney General Act, 2012, and the County Attorney Act, 2020.
    i. The payments were not supported by engagement letters or contracts with consultants for legal services procured and terms and conditions regarding representation of the County Government in legal matters. Further, the documents showing how the firms were identified were not provided for review.

ii. Files maintained at the County executive in respect of the law firms did not include fee notes and invoices to support the fees raised and paid to the firms during the year under the review.

46. In view of the above, the validity of the legal expenses amounting to Kshs. 175,768,131for the year ended 30 June, 2021 could not be confirmed.

3.8.1 Management Response

47. *The County Law Office when engaging the services of external Advocates issues instructions letters to the Advocates who in turn acknowledge receipt of such instructions and acceptance of the same.*
48. *Upon issuance of instructions and after commencement of the services, the external Advocates raise and issue fee note for payment to the County Law Office. We attach instructions letters and acknowledgement of instructions and itemized fee notes from the following firms of Advocates.*
    1. *Gichimu Mungata & Company Advocates*
    2. *J. Muoki & Company Advocates*
    3. *O.N Makau & Company Advocates*
    4. *Mutua Nyongesa Muthoka Advocates*
    5. *Martim & Company Advocates*
    6. *Nyamu & Nyamu Advocates*
49. *In relation to the provisions of the Office of the County Attorney Act, 2020, the office did seek the approval of the County Executive Committee to engage the services of External Advocates as we await recruitment and appointment of the additional Legal counsels by the Machakos County Public Service Board.*
50. *The issue of seeking approval from the Attorney General is a matter pending conclusion in Court and interim orders were issue barring the implementation of circulars issued concerning this matter in the following application filed in Court in July 2020. We attach a copy of the ruling 22nd July 2020.*
51. *The County Law Office is grossly understaffed and to remedy this situation, we sought and got the approval from the County Executive Committee to recruit two (2) additional*

Legal Counsels-Litigation to aid in scaling down the matters being handled by External Advocates and reduce the financial burden borne by the County Government in terms of the payment of legal fees.

52. *With the additional Legal Counsels, the Office will scale down on outsourcing legal services from external Advocates, hence reduced legal fees bill.*
53. *In July 2020, the County Attorney appointed an internal Legal Fees Verification Committee with mandate to verify and negotiate legal fees and make sure the County Government gets value for services rendered. We attach a copy of the appointment letter. (**Appendix 8**).*

3.8.2 Committee Observations

54. Honorable Speaker, the Committee observed the following;
    i. Though the Accounting Officer claimed to have sought approval from the County Executive Committee, to engage the services of External Advocates pursuant to County Attorney Act, 2020, no proof on the same was availed to the either the Committee to the auditor.
    ii. The County is risking loss of public resources through unnecessary engagement of private firms when we know very well that it has a well-established office of the County Attorney.
    iii. Basic documents like invoices and proof of how the legal firms paid the legal charges in question were not availed for audit.

3.8.3 Committee Recommendations

i. The Committee recommends that all the supporting documents related to the payments in question be forwarded to the Auditor for verification within the next 90 days after approval of this report and the outcome reported back to the Assembly.
ii. The County should equip the office of the County Attorney with enough legal personnel and requisite budget in order to minimize over dependency of external legal services. This will be a good move toward prudent use of public resources.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for Conclusion

3.9 Non- Compliance with the law on Fiscal Responsibility- Wage Bill

55. The statement of receipts and payments reflects an expenditure amounting to Kshs. 5, 602,656,468 on compensation of employees representing 47% of the total receipts of Kshs. 11, 026,870,945 during the year. This is contrary to the provisions of Regulations 251 (b) of the Public Finance (County Governments), Regulations 2015 which limits expenditure on wages and benefits to not more than 35% of the total revenue for the year.

Consequently, Management is in breach of the law.

3.9.1 Management Response

56. The county government spent more than 35% of the budget in compensation of employees because when the National Government, ministry of health devolved its members of staff to the county government, the large number of staff in that ministry had to be included in the county's payroll. Moreover, the Collective Bargaining Agreement (CBA) between Ministry of Health and KMPDU significantly contributed to the Compensation of employees surpassing the 35% threshold. The department of health monthly total wage bill amounts to an average of Ksh.239,768,506.24. This is 63% of the total wage bill ***(compensation of employees)*** *before factoring other departments. Wage bill by-products for financial year 2020/2021 is attached for review.* ***(Appendix 1.2 L& E).***

3.9.2 Committee Observations

i. During the year under review, the County wage bill stood at 47% of the total receipts contrary to the provisions of Regulations 251 (b) of the Public Finance (County Governments), Regulations 2015 which limits expenditure on wages and benefits to not more than 35% of the total revenue for the year.
ii. The huge County wage bill was majorly contributed by the large number of Health staff that were inherited from the National Government. The department of health contributes 63% of the total wage bill leaving only 37% for the other departments to share.
iii. A task force was constituted by the Governor to audit the county staff and make recommendations on how to address the wage bill. The committee confirmed that the report was completed.

Committee Recommendations

i. The County Public Service Board should initiate logical measures that will guide the County Government in reducing the County wage bill to the allowable threshold.

ii. The relevant Department should forward to the Assembly the report on County Staffing and wage bill that was presented to the Governor with recommendations therein for the purpose of oversight.

3.10 Unsustainable Electricity Costs on Boreholes

57. Review of records relating to borehole operations and electricity costs revealed that the county government had 494 operational boreholes out of which 99 were powered by electricity, 391 by solar panels and four (4) powered by diesel generators. Further, the records reflect that 14 of the electricity powered boreholes had been disconnected.
58. The County through the Department of Energy paid an amount of Kshs.67,645,800 to Kenya Power company ltd as electricity bills, the bulk of which was on account of pumping water from the boreholes and dams to reservoir tanks for distribution. However, the residents supplied with the water were not paying for the commodity and thus, all the operational costs were being borne by the County Government, which may not be sustainable. It was not clear why the boreholes were not handed over to the existing water companies which are fully owned by the County government and were better placed to manage the services and charge a fee to the consuming residents to cover operating cost.
59. In the circumstance, the County Government is likely to continue incurring high electricity bills against constrained resources.

3.10.1 Management response

60. *The department resorted to change all the electricity powered boreholes to solar powered and the process has already started*.

3.10.2 Committee Observations

i. During the year under review, the County Government incurred high expenditure amounting to Kshs. 67,645,800 on payment of electricity used to power boreholes. The

Committee noted that this expenditure was not matched with any income since the residents were provided with free water hence the sustainability of the boreholes depended fully on the funding from the County Government.

ii. There was regular disruption of water service delivery to the residents due to frequent electricity disconnections.

Committee Recommendations

i. The County Water Committee that was constituted by the Governor to oversee operation of boreholes should come up with strategies of charge affordable rates on the borehole water in order to generate income that would help in maintenance of the boreholes

ii. The County should fully embrace the use of solar energy in powering boreholes and also in other areas since clean energy is cheap and is an adaptation measure to climate change menace.

3.11 Grounded Motor Vehicles

61. Review of County Vehicle records revealed that sixteen (16) vehicles attached to the Department of Water, Irrigation, Environment and Natural Resources were grounded. In addition, a vehicles belonging to the county Government, a Toyota Prado registration number KBY 215B, was reported to have been stolen. However, documents regarding insurance claim and repayment process were not provided for audit.

62. Further, three (3) Ashok Leyland drilling rigs and test pumping units' registration numbers KHMA 140G, KHMA 141G and KHM 143G were grounded which greatly hampered the ability of the Ministry to continue drilling and test pumping boreholes in the County.

63. In the circumstances, the County Government was not getting value for money from the vehicles and their conditions continue to deteriorate due to disuse.

3.11.1 Management response

64. *Continuously the department is undertaking repair and maintenance of its fleet; however, in the year under review the mechanical unit had requested a budget of 30 million of*

which 8 million was approved. This caused the department no to adequately meet its maintenance of fleet objective.

65. *Further the department through its mechanical unit had identified fleet that required disposal. A recommendation for the same was send to the County Asset Disposal Committee.*
66. *On 5th December 2016 Motor vehicle KBY 215B was reported missing as per OB number 39/5/12/2016. Details of insurance and claim are attached. A claim of the same was made through Max and Sirch Insurance Agency.* ***(Appendix 5 L& E)***

3.11.2 Committee Observations

i. The County department in charge of fleet management was not adequately funded hence making it unable to fully repair and maintain its fleet.

ii. Some of the questioned grounded vehicles were unserviceable and the department has identified them for disposal as per the Public procurement and disposal Act procedures

iii. Motor vehicle KBY 215B which was stolen was reported to the police as per OB number 39/5/12/2016 and insurance claim of the same done but upto date no compensation was done.

3.11.3 Committee Recommendations

i. The County Government should make adequate budgetary allocation to the directorate of fleet management in order to ensure the grounded vehicles are repaired and continue serving their intended purpose.

ii. All the vehicles that are due for disposal should be disposed as per the provision of Public Procurement and Disposal Act.

iii. The County Government should furnish the Assembly with the report of all the County Vehicles, their current status and the department they serve.

iv. Thorough audit should be done on all the County fleet to ensure that they are not misused for private purposes but are serving the public as intended.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Basis for Conclusion

3.12 Lack of Information Communication Technology (ICT) Policy

67. Review of use of Information Communication Technology (ICT) by the County Government indicated there was no documented ICT policy and an ICT strategic plan to provide guidance on use of the technology. As a result, it was not confirm whether the ICT needs identified, and investments made were aligned to the County Strategic Plan.
68. Further, various ICT systems which were in use at the County Executive, including revenue collection, were not integrated. Consequently, the potential of the various systems to enhance efficiency and effectiveness in the operations of the County Executive was constrained.

3.12.1 Management Response

69. *The ICT policy has undergone through the various stages of development including public participation on the 9th of October 2020. It awaits approval from the executive committee. The ICT steering committee formation proposal is also awaiting the approval of the executive committee, once approved the committee will be up and running. The COVID -19 pandemic has also contributed to the delay in operationalization of the same. A Draft ICT policy is appended.* ***(Appendix 1. I/C).***

3.12.2 Committee Observations

70. The Committee noted that the department has a draft ICT policy that has taken too long to be approved by the executive committee despite public participation having been done way back on 9th October, 2020.

3.12.3 Committee Recommendations

71. The Committee recommends that the ICT department should fast track the approval of the ICT Policy in order to provide a proper guidance to the County Government on the use of Technology and the same policy should be forwarded to the Assembly for approval within 90 days after approval of this report.

3.13 Lack of Independent Internal Audit Function

72. Evaluation of the Internal Audit function at the County Executive revealed that the officers posted to the departments were also assigned operational activities which included approval of payments. As a result, the department's independence in auditing the expenditure and other oversight roles relating to evaluation of adequacy and efficiency of internal control systems and processes was impaired.

73. Consequently, the Internal Audit department in the County Executive of Machakos was not fulfilling the requirements of the internal audit operations prescribed in Section 155(6) of the Public Finance Management Act, 2012 and the Public Finance (County Governments) Regulations, 2015.

3.13.1 Management Response

74. *The County in its endeavor to attain independence of the Internal Audit Function, an internal audit committee was established where the Internal Audit functionally reports.*

75. *The management is in the process of capacity building and strengthening internal controls involved in the payment process through document examination. This will help achieve a centralized internal audit function for post audit.*

3.13.2 Committee Observation

76. The Committee noted that the County internal audit officers were being engaged in operational activities such as approval of payments which is a contravention of the provisions the Public Finance (County Governments) Regulations 2015. This action compromises their professional independence and consequently affects their performance in their oversight role in audit matters.

3.13.3 Committee Recommendation

77. The Committee recommended that in order to ensure professional standards of the internal audit exercise are achieved; the audit department should work independently and be guided by all the relevant Laws.

3.14 Lack of an approved Risk Management Strategy

78. During the year under review, the county government did not have in place a risk management policy since no evidence was provided to indicate how risk assessment was undertaken during the year to identify and mitigate potential risks. Failure to put in place

a risk management strategy exposes the county Government to losses through fraud and wastage event of occurrence.

79. In the circumstances, the County government is in contravention of Regulation 158. (1) of the Public Finance Management (County Governments) Regulations, 2015 which requires Accounting Officer of a county government entity to develops risk management strategies, which include fraud prevention mechanism and develop a system of risk management and internal control that builds robust business operations.

3.14.1 Management Response

80. Management is at consultation stages with relevant stakeholders with a view of coming up with a robust Risk Management Framework.

3.14.2 Committee Observations

81. The department is working towards developing a risk management policy that will help shield the County Government from any losses that may occur in the event of occurrence of any risks.

3.14. 3 Committee Recommendations

82. The Committee recommended that the County Government hastens the process of formulating the said policy and ensure that the policy is forwarded to the Assembly for approval as required by law.

4.0 GENERAL OBSERVATIONS

83. Hon Speaker, the Committee after scrutinizing the queries in part one on basis of qualified opinion and part two and three of the report on lawfulness, compliance to relevant laws and internal controls respectively makes the following general observations in addition to the specific observations stated under each query;
    1. The figures in the financial statements vary from the corresponding values in the Ifmis statement. The Accounting Officer confirmed that the figures in the financial statement for all the entries are correct and the variation noted from the Ifmis statement was as a result of Ifmis technical problem that leads to posted figures

failing to reflect in it. On inquiring, the auditor confirmed to the committee that this is a national problem which the National treasury was addressing.

2. The Committee confirmed that the variation in the query on bank balance which is supposed to be read as at 30 June in the financial year in question was occasioned by late disbursement of funds that were received and paid in July contrary to Regulations 97(1) of The Public Finance Management (County Governments) Regulations, 2015.
3. On the query on unsupported payments, the Accounting Officer provided inspection reports for motor vehicles and other relevant documents to the Auditors but the reports were unsatisfactory as confirmed by the same auditors during the interrogation time.
4. The report from the Intergovernmental Technical Committee in 2013 on County Assets and Liabilities documented all the assets of the County that include land, buildings and vehicles but many of the assets lacked valuation and as at the year of reporting they had not been valued. This implies that the County Government cannot collect revenue from unvalued assets.
5. The Department of Lands is very understaffed. The very few Valuers, Planners and Surveyors cannot cope with the assignments being undertaken on preparation of updated valuation roll. The Department has all through sought assistance of Staff from the National Government when undertaking valuation assignments. This was also reported by the Chief Officer Lands during the CIDP and Budget interrogation. This state of affairs has denied the County a good opportunity of doubling revenue collection from County property as reported by the same Chief Officer.

6. On the query on County Pending Bills, the committee noted that the County was making progress in terms of settling pending bills. Further, the Committee was notified that this matter is part of the assignment for the Pending Bills Task Force which H.E, the Governor instituted and so the Accounting Officer informed the committee that more valid recommendations from the report were expected.
7. On the query on lack of ownership for water facilities, the Committee noted that there are a number of water facilities that were built on private land because public land

was not available. In such cases, an agreement between the land owner and the County Government was made but these agreements according to the committee are informal and the owners of the lands may claim ownership of the water facilities and deny the community access to water.

8. The County is risking loss of public resources through unnecessary engagement of private legal firms when we know very well that it has a well-established office of the County Attorney.
9. On the query on Wage Bill, during the year under review, the County wage bill stood at 47% of the total receipts contrary to the provisions of Regulations 251 (b) of the Public Finance (County Governments), Regulations 2015 which limits expenditure on wages and benefits to not more than 35% of the total revenue for the year. The huge County wage bill was majorly contributed by the large number of Health staff that was inherited from the National Government. The department of health contributes 63% of the total wage bill leaving only 37% for the other departments to share
10. On unsustainable water bills of electricity, the County Government incurred high expenditure amounting to Kshs. 67,645,800 on payment of electricity used to power boreholes. The Committee noted that this expenditure was not matched with any income since the residents were provided with free water hence the sustainability of the boreholes depended fully on the funding from the County Government.
11. The Committee noted that the County internal audit officers were being engaged in operational activities such as approval of payments which is a contravention of the provisions the Public Finance (County Governments) Regulations 2015. This action compromises their professional independence and consequently affects their performance in their oversight role in audit matters

5.0. GENERAL RECOMMENDATIONS

84. Honorable Speaker, the Committee after considering the specific observations under each query and the above general observations makes the following general recommendations;

1. That the Department of Finance should urgently address the recurring matter on IFMIS challenges with the National Treasury so that the system error is addressed. Further, such challenges should be well documented and reported to the Auditors during the interrogation exercise for consideration.

2. That the County Government of Machakos in collaboration with the Inter-governmental Relations Committee should address the recurring challenge of late disbursement of funds. This challenge has since 2013 resulted to a query on misstated bank balance because Counties are forced to spend the late disbursed funds during the early days of July every financial year and inability of the County Government to absorb funds. This has also led to chronic pending bills and poor service delivery.

3. That the Accounting Officer should fully disclose all information to auditors during the time of audit pursuant to Section 9 (1) (e) of the Public Audit Act, 2015, that gives the Auditor unrestricted access to all required information and books to avoid unnecessary issues from appearing as queries.

4. That the County Government of Machakos should in the next financial year allocate sufficient funds to facilitate preparation of updated valuation roll and to recruit enough County Valuers, Physical Planners and Surveyors. This will help speed up the process of developing valuation roll and securing of public land and ownership documents raised in the query and subsequently increase revenue collection.

5. On unsustainable costs of electricity in boreholes, the County should fully embrace the use of solar energy in powering boreholes since solar power being clean energy is cheap and is an adaptation measure to climate change menace.

6. The County Government of Machakos should allocate funds in phases (per financial year) from the next financial year to clear the above verified outstanding pending bills and within each financial year in question appraise the Assembly with a status report on progress of payment of this pending bill. Further, the report of the Pending Bills Committee that was constituted by H.E, the Governor early last year should be

forwarded to the Assembly for the purpose of oversight and guidance in the budget making process.

7. That the County Government should formalize the agreements by acquiring title deeds for the water facilities that were constructed in private land to curb possible conflict in resource usage by community members and unnecessary legal issues.
8. There is need for the County Government to equip the office of the County Attorney with enough legal personnel and requisite budget in order to minimize over dependency of external legal services. This will be a good move toward prudent use of public resources.
9. That the County Public Service Board should initiate logical measures that will guide the County Government in reducing the County wage bill to the allowable threshold. Further, the report by the County Staffing and Human Resource Task force that was constituted by H.E, the Governor last year should be forwarded to the Assembly for the purpose of oversight.
10. That the County Water Committee that was constituted by H.E the Governor to oversee operation of County boreholes should come up with strategies of charging affordable rates on the borehole water in order to generate income that would help in maintenance of the boreholes.
11. The preparation of the Information Communication Technology and Risk Management Policies should be finalized and forwarded to the Assembly for approval to allow for subsequent implementation.
12. Pursuant to the provisions of Section 53 (1) of the Public Audit Act 2015, the Accounting Officer should within 90 days after approval of this report take the relevant steps to implement the recommendations in this report or give an explanation in writing to the Assembly why the report is not implemented.

6.0 CONCLUSION AND ACKNOWLEDGEMENT

85. Hon. Speaker, the report on financial statements of County Executive of Machakos for the year ended 30 June 2021 is Qualified Opinion. This implies that the report fairly represents the financial position of the County Executive in the year in question. It

indicates well that if the matters raised by the Committee are considered in addition to proper internal controls, compliance and observance of disclosure of information, a positive shift in preparation of good financial statements will be realized.

86. Hon. Speaker, the Committee on Public Accounts and Investments is grateful to your office, the Office of the Auditor General for the advisory given, Members of the Committee and the Secretariat for commitment and effort throughout the process of report writing.
87. It is therefore my privilege and pleasure on behalf of Public Accounts and Investments Committee to table before this Honorable House the report on Financial Statements of County Executive of Machakos for the Year ended 30th June 2021 for discussion and adoption.

Thank you Honorable Speaker.

.........to whom much is given, much is required; Luke 12:48

P.N

HON. PHILIP NDOLO

CHAIRPERSON, PUBLIC ACCOUNTS AND INVESTIMENTS COMMITTEE