

**SPECIAL AUDIT REPORT  
OF THE AUDITOR-GENERAL  
ON  
FINANCIAL AND HUMAN RESOURCE OPERATIONS  
AT  
NATIONAL CONSTRUCTION AUTHORITY (NCA)  
FOR THE PERIOD 2014/2015 TO 2016/2017**



## **VISION**

Accountability and effective management of public resources

## **MISSION**

To audit and report on the management of public resources for improved service delivery to the Kenyan people.

## **CORE VALUES**

Integrity  
Objectivity  
Professionalism Competence  
Innovation  
Team Spirit

## **MOTTO**

Enhancing Accountability

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THE NATIONAL ASSEMBLY  
PAPERS LAID

DATE: 19 NOV 2020

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Table 1: List of Abbreviation

Abbreviation	Full Name
BARGC	Board, Audit, Risk and Governance Committee
BQs	Bills of Quantities
ED	Executive Director
FAD	Finance Administration and Development Committee
FY	Financial Year
FS	Financial Statements
HODs	Heads of Departments
HQ	Head Quarters
NCA	National Construction Authority
TOR	Terms of Reference

## 1 EXECUTIVE SUMMARY

### 1.1 Introduction and Background

- 1.1.1 On 14 March 2018, The Office of the Auditor General (OAG) received an unreferenced letter dated 11 December, 2017 from one of the National Construction Authority (NCA) Board Members requesting for an investigation on NCA Revenue, Receivables and Expenditure management for the period 2014/2015 to 2016/2017.
- 1.1.2 The NCA is a parastatal established by the National Construction Authority Act No.41 of 2011 with the mandate of overseeing the construction industry and coordinating its development.
- 1.1.3 NCA's main function is to regulate, streamline and build capacity in the construction industry. In order to do this; the authority registers construction projects, contractors, supervisors and gives accreditations to construction site supervisors and workers.

### 1.2 Terms of Reference

- 1.2.1 The special audit was guided by the following Terms of References:
- Governance;
  - Budgets and Budgetary Controls;
  - Revenue Management;
  - Human Resources Management; and
  - Misappropriation of Funds

### 1.3 Scope of work

- 1.3.1 The special audit reviewed the financial operations at NCA in line with the aforementioned TORs covering financial years 2014/2015 to 2016/2017.
- 1.3.2 The scope of work was limited to NCA headquarter offices and the following 10 Regional offices; Nairobi, Mombasa, Nakuru, Kisumu, Eldoret, Kitui, Nyeri, Embu, Kakamega and Kisii.

### 1.4 Structure of the Report

- 1.4.1 The special audit report has three sections; the executive summary, the detailed approach and the detailed findings. The report should be read in its entirety in order to comprehend fully the approach used and the findings. The report has reported on facts as understood, with the aim of informing the Board and/or Management on their deliberations and decision making, cognizant of any limitations raised.

## 1.5 Challenges/Limitation

1.5.1 The special audit encountered the following limitations:

- Due to time and resource constraints, the special audit did not cover the following NCA operation centers: Garissa, Isiolo, Kajiado and Kiambu Regional offices, Ongata Rongai and Wajir liaison offices and City square, Eastleigh, Kibera, Madaraka, Nyamira, Siaya, Bomet, Kwale, Makueni, Nanyuki, Baringo, Iten, Lodwar and Busia Huduma centers;
- The allegation touched on an officer who resigned and took time before he appeared for interview thus delaying timely completion of the audit; and
- The management of NCA failed to avail documents detailed in **Appendix 3**.

## 1.6 Key Findings

### Governance

- 1.6.1 The NCA is governed by a Board of Directors comprising Board members, a Chairperson and the Executive Director as the Secretary and the Chief Executive Officer. The Executive Director is the Secretary to the Board and Registrar of Contractors.
- 1.6.2 The special audit noted that the 2015-2018 NCA Board composed of 14 Board Members in accordance with the first schedule of the NCA Act 2011 but contravened Section 1.1.3 of the Mwongozo guidelines that requires a maximum of nine Board Members.
- 1.6.3 During the period under review, the internal audit department conducted audits and for each audit, there were unresolved audit issues which the internal audit department gave recommendations for consideration by the Audit, Risk and Governance Committee.
- 1.6.4 It was noted that out of a total of twelve audit reports with 69 issues/ recommendations, 9 issues/ recommendations representing 13% of overall recommendations by the Internal Audit Department had not been fully resolved by the Audit, Risk and Governance Committee.

## Budgets and Budgetary Controls

- 1.6.5 A comparison between the budgeted amounts as per the financial statements and the budget extracts from the ERP system disclosed a cumulative variance in budgeted revenue and expenditure of Kshs.1,217,371,600 and Kshs.1,059,547,458 respectively .
- 1.6.6 According to Section 33(3) of the NCA Act number 41 of 2011, the annual estimates of NCA should be approved by the Board before the commencement of the financial year to which they relate and thereafter the Authority should not increase or decrease the annual estimate except with the Authority of the Minister.
- 1.6.7 There was no evidence that the NCA budgets had been approved in compliance with section 11(1) of the State Corporations Act.
- 1.6.8 In view of the contradicting figures of budgets in the financial statements and the ERP systems coupled with failure by the NCA management to avail approved budgets for review, the special audit could not provide assurance that the budgets of NCA for the period under review were duly approved in accordance with the law.
- 1.6.9 According to the NCA budget extracted from the ERP system, a total of Kshs.8,823,721,202 and Kshs.6,518,748,957 was the total budgeted revenue and expenditure respectively, for the years under review.
- 1.6.10 The special audit noted that, whereas the Authority's budgets disclosed surplus funds cumulatively amounting to Kshs.2, 304,972,244 , analysis of actual revenue earned and expenditure incurred established that the Authority had a revenue surplus of ksh.2,183,221,962 .
- 1.6.11 Section 16(2) of the State Corporations Acts provides that ,where there are any surplus moneys after making the provisions required, the surplus monies shall be disposed of in such a manner as the Minister, in consultation with the Board may, in writing, direct.
- 1.6.12 There were no details on how this surplus revenue was utilized except a request by management to the Board on opening of fixed deposit and CDS accounts. Under the circumstance, the special audit could not provide assurance that the aforementioned surplus was utilized in a lawful and effective manner.

## Revenue Management

1.6.13 During the period under review, NCA records indicated a total revenue of Kshs.5,969,275,556 was collected as summarized below:

SOURCE OF INCOME	2014/15 (KSHS)	2015/16 (KSHS)	2016/17 (KSHS)	TOTAL (KSHS)
GoK Grants-recurrent	38,608,602	138,260,752	435,463,696	612,333,050
Other Grants	43,526,000	88,895,561	-	132,421,561
Construction Levy	812,341,798	2,176,743,365	591,276,270	3,580,361,433
Registration of Workers	4,736,700	15,411,910	3,113,914	23,262,524
Investment Income	26,588,781	55,994,987	40,503,002	123,086,770
Contractors application fees	35,217,840	42,956,821	39,582,322	117,756,983
Contractors registration	213,864,231	187,593,571	172,211,608	573,669,410
Contractors Renewal	100,112,007	261,635,250	213,162,888	574,910,145
Conferences and Workshops	31,511,750	31,599,678	69,337,660	132,449,088
Consultancy	13,915,000	16,885,000	15,000,000	45,800,000
Miscellaneous revenue	31,665,421	8,590,888	12,968,280	53,224,589
<b>Total</b>	<b>1,352,088,130</b>	<b>3,024,567,784</b>	<b>1,592,619,640</b>	<b>5,969,275,556</b>

1.6.14 It was noted that, a total of Kshs.3,580,361,433 was recorded as construction levy received for the period under review. However, the special audit could only confirm Kshs.1,769,614,848 as the construction levy received and the balance of Kshs.1,810,746,585 could not be confirmed since it could not be supported by relevant documents.

1.6.15 NCA regulations, part 6, Section 26(2) requires the levy to be paid before the commencement of the contract work. It was however noted that, during the period

under review, the then Executive Director authorized commencement of construction works before the levy was paid contrary to section 26(2) of the NCA Regulations part 6. This was through signing of preliminary compliance certificates.

- 1.6.16 The special audit noted that, for the period under review, the Authority earned interest of Ksh.123,086,770 from investment. However, NCA did not avail details of the sources of the interest earned from investment. Under the circumstance, the special audit could not provide assurance on the completeness and accuracy of the amount of Kshs.123,086,770 recorded in NCA books as interest earned from investment.
- 1.6.17 The special audit sampled a total of Kshs.86,220,893 and subjected it to compliance and substantive tests. It was noted that, receipts totaling Kshs.83,265,369 were properly banked, recorded and accounted for. The remaining receipts amounting to Kshs.2,955,524 were not properly accounted for as they either lacked support documents or they were understated.
- 1.6.18 According to the NCA Act, 2011, section 26(5), any amount of construction levy which remains unpaid after a period of three months from the date on which it falls due shall be, summarily recoverable from the owner as a civil debt. It was established that , NCA had an outstanding levy receivable of Kshs.1,644,891,596 being accumulated levies receivable from developers.
- 1.6.19 The special audit established that, NCA registered projects from the Head Qaurters and Regional Offices. Once a developer had paid all his dues, he was allowed to proceed with development. It was also established that, project developers were allowed to continue with their construction process even when the levy had not been fully paid. This led to accumulation of unpaid levy of Kshs.1,644,891,596. The special audit further established that officers would give interim certificates to developers which eventually led to loss of revenue from levy in NCA.
- 1.6.20 The Public Finance Management (National Government Regulations ) 2015 , section 90 (1) requires Accounting Officers to ensure bank accounts reconciliations are completed for each bank account held by that Accounting Officer, every month and submit a bank reconciliation statement not later than the 10th of the subsequent month to the National Treasury with a copy to the Auditor-General.
- 1.6.21 The special audit was not provided with bank reconciliations statements for the below mentioned bank accounts. There was also no evidence that the NCA prepared bank

reconciliations in regard to the mentioned banks contrary to the Public Finance Management (National Government Regulations ) 2015 ,section 90 (1).

ACCOUNT NAME	ACCOUNT TYPE	ACCOUNT NUMBER	ACCOUNT PURPOSE
KCB-KSH	Current	1136368019	Operations
KCB-KSH		01178700763	Mortgage
CBA-KSH	Current	7012550017	Operations
CBA-USD	Current	7012550022	Operations
Co-operative Bank-KSH	Current	01141163043901	Operations
Consolidated Bank-KSH		10011202002051	Car loan

1.6.22 A total of 2,213 project registration files with contract sums totaling Kshs.50,038,818,464 were reviewed. Out of these, the audit noted that project registration files with contract sums totaling Kshs.31,101,892,626 were properly maintained and recorded.

1.6.23 The remaining projects with contract sums totaling Kshs.18,936,925,838 had irregularities amounting to Kshs.152,948,966 in relation to project registration levies as follows:

IRREGULARITIES	AMOUNT (KSHS)
Understated levy and Projects not included in the FS	79,402,117
Overstated Accounts Receivables in FS	18,319,374
Lack of evidence for levy paid	6,457,944
Leviable Projects not charged levy	8,083,754
Outstanding levy(payments done in installments)	6,344,690
Levy invoiced but not paid	32,293,092
Undervalued Project Levy	2,047,991
<b>Total Irregularities on project registration</b>	<b>152,948,966</b>

1.6.24 The special audit also identified other controls weakness which included poor record keeping/incomplete project registration files. Files lacking crucial documents such as

receipts, deposit slips, invoice letters, compliance certificate, BQs, project drawings, NEMA license/ approval and/ or County approval made it difficult for the audit team to independently verify them.

1.6.25 According to records from NCA Head Office, Kitale liaison office was issued a receipt book with the serial number C9741551 to C9741600 on 14 July 2016. However, the records in Kitale liaison office confirmed that the receipt book was never received at the liaison office.

1.6.26 In addition, receipt books totaling to Kshs.28,633,075 were issued to various liaison offices yet they had not been recorded at the Head quarters.

### Expenditure Management

1.6.27 As noted earlier, Kshs.5,969,275,556 was the total income available for utilization by the NCA for the period under review. Out of these amounts, the NCA utilized Kshs.3,786,053,592 leaving a balance of Kshs.2,183,221,962. Payment Vouchers amounting to Kshs. to Kshs.1,842,672,546 were not availed for audit review.

1.6.28 The special audit established that NCA does not maintain a vote book and therefore it was difficult for the special audit team to confirm utilization per vote allocated and applied against the AIE issued.

1.6.29 A review of payment vouchers disclosed the following irregularities:

Expenditure item	Amount (Kshs)
Unsupported meal allowances for contracted services	716,000
Unsupported allowances for Kibera NYS Youths	8,607,600
Unsupported wages	69,296,568
Overpayments of salaries	5,386,766
Unsupported imprest	50,646,536
Irregular cash Encashments beyond allowable limits	457,782,866
Unsupported expenditures for Rapid response initiative	64,630,600
Irregular Procurement of goods & services	236,029,800
Irregular procurement of JKUAT Consultancy services	804,600

Expenditure item	Amount (Kshs)
Unaccounted for Standing imprest	18,790,343
<b>TOTAL</b>	<b>912,691,679</b>

### Human Resources Management

1.6.30 During a Special Board meeting held on 3<sup>rd</sup> June 2015, the Special Board amended the Authority's organogram to replace the position of the Manager Legal with that of the Corporation Secretary and Head of Legal Services and also resolved to fill the position internally, and Mr. Samson Ouma Lukoba be promoted and appointed as the Corporation Secretary and Head of Legal Services. This resolution was communicated to the General Manager, Human Resource and Administration through an unreferenced internal memo dated 5 June 2015. Mr. Samson Ouma Lukoba was formally appointed into this position effective from 01 July, 2015 as per the appointment letter dated 7 October, 2015 Referenced NCA 0022/83.

1.6.31 The special audit noted that, this was against section 1.4 (IV) of the NCA recruitment policy referenced NCA/HRA/PCY/01 that requires that applicants shall be recruited on merit based on their academic and /or professional qualifications, experience, skills and competencies. It also provides that selection of candidates will be on merit and must meet the minimum set pass mark. Section 1.4 (XI) further requires selection exercise to be undertaken in a transparent manner by a Committee(s) composed of persons with appropriate expertise.

1.6.32 The following irregularities were noted during internal recruitments:

- That there was no consultation with various section heads within the Authority before seeking approval to advertise the vacant positions.
- Casuals were engaged on a two years contract without suitability interviews contrary to the directive of the NCA Board of 26 January, 2016. Further, there was no policy of engaging casuals on contracts .
- The Authority engaged 44 staff Members on two (2) years contract without suitability interviews being done as recommended by the Board and later confirmed 41 of them into permanent and pensionable positions without approval of the Board and the National Treasury . The appointments were backdated to 2016 when they were engaged on contract. This appointment was done before expiry of their contract.

- The Authority was to carry out a competitive process to identify students who have completed their undergraduate courses and place them in the graduate trainee programme. The Board approved recruitment of twenty six (26) graduate trainees. However, the management recruited a total of thirty (30) graduate trainees. The management therefore recruited four (4) more candidates above the number that was approved by the Board.
- Three (3) additional clerks were recruited without the approval of the Board or input of other Departmental Heads for positions which the candidates had not applied for.
- The Board approved recruitment of 5 drivers but the Executive Director authorized recruitment of 19 which was 14 more than the approved number. This recruitment was conducted by two (2) NCA staff. Again when the drivers were reporting, an additional one was included who had not been interviewed.

### Misappropriation of Funds

- 1.6.33 Through a letter dated 2 December, 2013, Mr. Fred Miseda was offered employment as a Senior Accountant with effect from 03 December, 2013 and subsequently offered an appointment letter on 9 December, 2013, which he accepted the terms and signed it on 11 December, 2013.
- 1.6.34 On 03 July, 2017, through a letter Referenced NCA/0009/46, Mr. Fred Miseda was re-designated as Assistant Manager, Finance, Grade C4 as per the approved career progression guidelines by the Board of Directors.
- 1.6.35 The Board Audit, Risk and Governance Committee sanctioned a special audit on levy collection process in Finance and Accounting Departments. It was established that, the Officer had misappropriated Kshs.22,670,595 which the disciplinary Committee recommended it be recovered from his salary. The recommendation was effected in March 2017 with Kshs.104,956.46 being deducted from his salary per month for a period of 216 months. There was no evidence that the matter was reported to either the Directorate of Criminal Investigations or the Ethics and Anti-corruption Commission for investigation and prosecution.
- 1.6.36 The Officer resigned from employment before conclusion of the recoveries. By the time of resigning, the organization had recovered only Kshs.1,154,521 through the payroll while the balance of Kshs.21,516,074 was still outstanding.

## 1.7 Irregularities and Management Responsibility

The following irregularities were noted during the special audit:

Irregularities/weakness	Risk /section of law violated	Amount (Kshs)	Responsibility
Failure by the BARGC to ensure outstanding Internal Audit issues and Recommendations are resolved by the Accounting Officer.	Inadequate oversight	N/A	<ul style="list-style-type: none"> <li>The then Executive Director</li> <li>Board Audit , Risk and Governance Committee (BARGC)</li> </ul>
Failure to demonstrate that NCA budgets had been approved in compliance with the law	Section 11(1) of the State Corporations Act.	8,823,721,202	NCA Management
Failure to avail details as to how surplus revenue was utilized	Section 16(2) of the State Corporations Act	2,183,221,962	NCA Management
Authorization of commencement of construction works before the levy was paid	Section 26(2) of the NCA Regulations part 6	3,580,361,433	The then Executive Director
Failure to provide documents to support interest recorded as earned	Failure to account for public funds	123,086,770	NCA Management
Failure to account for revenue earned	Loss of public funds	2,235,552	NCA Management
Allowing project developers to continue with their construction process even when the levy had not been fully paid resulting in	Loss of public funds	1,644,891,596.	NCA Management

Irregularities/weakness	Risk /section of law violated	Amount (Kshs)	Responsibility
outstanding levy collections			
Irregular management of project registration levies	Loss of public funds	18,936,925,838	NCA Management
Inadequate controls in managing receipt books	Loss of public funds	28,633,075	NCA Management
Failure to maintain vote book control procedures	Ineffective and inefficient budget monitoring that may compromise accurate financial reporting leading to subjective managerial decisions	5,969,275,556	NCA Management
Unsupported expenditures including irregular procurements	Loss of public funds	912,691,679	NCA Management
Failure to enforce Human Resource recruitment procedures	Poor governance	N/A	NCA Management
Misappropriation of Revenue by then Officer of NCA	Loss of public funds	22,670,595	The then NCA Officer, Mr. Fred Miseda
Failure to escalate a fraud case involving loss of public funds to relevant constitutional authorities for prosecution and other action	Loss of public funds	22,670,595	NCA Board of Directors and Management

## 1.8 Conclusions and Recommendations

1.8.1 In conclusion, the special audit established that NCA had weak Budgetary control procedures that could not provide efficient and effective monitoring and oversight over public funds. Revenue management procedures were also found to be inadequate leading to misappropriation of Kshs.22,670,595 by an Officer of the NCA. There was no evidence that this loss /misappropriation was reported to various investigative agencies for prosecution raising doubt on the commitment of NCA Management and the Board to zero tolerance to fraud. We further established violation of Human Resources Management procedures in recruitment and promotion of staff.

1.8.2 In view of the aforementioned observations, the special audit could not provide assurance that existing controls at NCA were sufficient to enhance lawfulness and effectiveness in the management of public funds.

1.8.3 It is recommended that:

- The Cabinet Secretary, Transport, Housing and Infrastructure should ensure that the composition of the NCA Board complies with the provisions of the Mwongozo guidelines.
- The NCA Board of Directors should assess the Public Finance Management Procedures at NCA to ensure they are effective in mitigating against risk of loss of public funds. This should include among others, Governance mechanisms, Budgetary controls, Revenue and expenditure management.
- The Ethics and Anti-Corruption Commission (EACC) should further investigate NCA Management for their individual and/or collective roles in the loss of Kshs.22,670,595 . If found culpable, the Director of Public Prosecutions should take appropriate action, including prosecution, against the culprits



NANCY GATHUNGU

AUDITOR- GENERAL

10 November, 2020

## 2 INTRODUCTION AND BACKGROUND

### 2.1 Background

- 2.1.1 The National Construction Authority is a parastatal established under the National Construction Authority Act No.41 of 2011 with a mandate of overseeing the construction industry and coordinating its development.
- 2.1.2 NCA's main function is to regulate, streamline and build capacity in the construction industry. In order to do this; the authority registers construction projects, contractors, supervisors and gives accreditations to construction site supervisors and workers.
- 2.1.3 National Construction Authority has 14 Regional offices, 12 liaisons offices and operates at 16 Huduma centers countrywide to effectively deliver registration services as detailed in **Appendix 1**.

### 2.2 Introduction

- 2.2.1 The Office of the Auditor-General received an unreferenced letter dated 11 December, 2017 from one of the NCA Board Members requesting for an investigation on NCA revenues, receivables and expenditures management for the period 2014/2015 to 2016/2017. The letter alleged financial malpractices at NCA as detailed in **Appendix 2**.

### 2.3 Terms of Reference

- 2.3.1 Upon reviewing the aforementioned allegations, the special audit Team developed the following Terms of References (TORs) to guide the audit.
  - a. Governance
  - b. Budgets and Budgetary Controls
  - c. Revenue Management
  - d. Expenditure / Utilization of Funds
  - e. Human Resources Management
- 2.3.2 **Appendix 2** details how we transformed the allegations into TORs.

## 2.4 Scope of Work and Limitations

### Scope

- 2.4.1 The special audit reviewed budgeting, governance, financial management and human resource management covering financial years; 2014/2015 to 2016/2017.
- 2.4.2 The scope of work covered the NCA headquarter offices and the following 10 Regional offices; Nairobi, Mombasa, Nakuru, Kisumu, Eldoret, Kitui, Nyeri, Embu, Kakamega and Kisii.
- 2.4.3 We encountered the following limitations:
- Due to time and resource constraints, the special audit did not cover the following NCA operation centers: Garissa, Isiolo, Kajiado, Kiambu, Ongata Rongai , Wajir liaison offices , City square, Eastleigh, Kibera, Madaraka, Nyamira, Siaya, Bomet, Kwale, Makueni, Nanyuki, Baringo, Iten, Lodwar and Busia Huduma Centers.
  - The allegation touched on an officer who resigned. It therefore took time before he appeared for interview, thus delaying timely completion of the audit.
  - The Management of NCA failed to avail documents detailed in **Appendix 3**.

## 2.5 Audit Approach and Methodology

- 2.5.1 In planning the detailed review, we planned and undertook a reconnaissance visit at the NCA Headquarters Offices for preliminary information gathering. We also held various planning meetings between 12 to 13 March and 23 to 30 April 2018. During these meetings, we discussed all the activities and tasks to be undertaken to meet the terms of reference. A detailed work plan was developed and applied in the execution of the assignment.
- 2.5.2 The special audit adopted the following methodologies;
- **Document review:** We reviewed the PFM Act 2012, PPDA 2005, Public Procurement and Asset Disposal Act 2015, Budget Estimates, PSC- HR Policies and Procedures Manual and other relevant documents.

- **Field visits:** We visited 10 NCA regional and 10 liaison offices in the following areas- Nairobi, Mombasa, Nakuru, Kisumu, Eldoret, Kitui, Nyeri, Embu, Kakamega and Kisii.
- **Experts' reports:** We used the Office of The Auditor -General's Information technology auditors .
- **Interviews:** The team interviewed officers from NCA, who clarified various issues that assisted in making an informed report.

2.5.3 A total of 17 individuals were interviewed comprising of staff and Board members.

**Table 2: List of Persons interviewed**

No.	Name	Designation	Date
1	Ms. Susan Karanja	Board Member Representing Treasury in the NCA Board	17 July, 2018
2	Mr. Steven Oundo	Chairperson of the Board	12 July, 2018
3	Ms. Anne Kiusya	Chair of HR Committee of the Board	16 July, 2018
4	Eng. Henry S. Amanje	Chair of Finance and Administration Committee of the Board	13 July, 2018
5	Mr. Wallace Atim	Chair of the Technical Committee to the Board	13 July, 2018
6	Eng. Maurice Akech	Acting CEO, NCA	12 July, 2018
7	Mr. Anthony Ochieng	Manager- Quality Assurance and Internal Audit	18 July , 2018
8	Arch. Stephen Mwilu	Manager- Regional Offices	10 July , 2018
9	Mr. James Kilonzi	Manager- Accounts	11 July, 2018
10	Ms. Christine Karimi	Manager- Finance	10 July, 2018
11	Mr. Joseph Kirunja	Accountant II	19 July, 2018
12	Ms. Vincencia Apopa	Manager- Supply Chain	11 July, 2018

No.	Name	Designation	Date
13	Mr. Paul Kariuki	Manager-Human Resource	18 July, 2018
14	Mr. Alex Joseph Magembe	Former Chairman- HR Committee of the Board	16 July, 2018
15	Mr. Fred Miseda	Finance Officer with disciplinary cases	17 July, 2018
16	Mr. Samson Lukoba	Legal officer	24 July, 2018
17	Mr. Stephen Obare	Manager-ICT	24 July, 2018

2.5.4 The information was analyzed, authenticated and corroborated before using it as evidence in our report.

## 2.6 Report Structure

2.6.1 This special audit report is structured as follows:

- i. Executive Summary
- ii. Introduction and Background
- iii. Detailed Findings
- iv. Appendices

### 3 DETAILED FINDINGS

#### 3.1 Governance

##### Structure, mandate, functions and financing of NCA

- 3.1.1 The National Construction Authority (NCA) is established under the NCA Act No.41 of 2011 to oversee the construction industry and coordinating its development. It is governed by a Board of Directors comprising Board Members, a Chairperson and the Executive Director as the Secretary and the Chief Executive Officer. The Executive Director is the Secretary to the Board and Registrar of Contractors.
- 3.1.2 The powers of the Authority are outlined in Section 6 (1) of the NCA Act and include;
- a) To award certificates of proficiency to contractors, skilled construction workers and construction site supervisors;
  - b) With the approval of the Minister, to impose fees or any other charges as it deems fit in respect of any of its functions or powers
  - c) With the approval of the Minister, to facilitate, or promote the establishment or expansion of, companies, corporations or other bodies to carry on any activities related to construction either under the control or partial control of the Authority or independently; and
  - d) To receive, in consideration of any services that may be rendered by it, such commission or payments as may be agreed upon with any person.
- 3.1.3 NCA's sources of finance are prescribed in various sections of the NCA Act as follows:
- a) Self-financing/Authority's own sources: Section 31 of the Act stipulates that the Authority shall impose the necessary levies, registration charges and fees to raise monies for the Authority.
  - b) Government Funding: Section 30(a) of the Act stipulates that Parliament shall provide funding for the purposes of the Authority.
  - c) Development Partners: The Authority partners with Development Partners to achieve their development goals.
  - d) Private/Public partnerships-all monies from any other source provided for or donated or lent to the Authority.
- 3.1.4 According to Part 7 of the NCA regulations, 2014, all fees payable to the Authority for its services shall be approved by the Cabinet Secretary for the Ministry responsible for Public Works and shall be published in the Kenya Gazette.

3.1.5 The NCA governance structure/organogram as outlined in the NCA Strategic plan for 2015-2020 is as detailed in **Appendix 4**.

#### **NCA Board of Directors**

3.1.6 Section 7 the NCA Act establishes the Board of Directors of the Authority and Section 9 outlines how the Board shall conduct its affairs and business.

3.1.7 According to the NCA's strategic Plan for the period 2015-2020, the Board and its Committees are responsible for providing the overall policy direction of the Authority. In particular, providing resources for the Authority, approving expenditure of the Authority, establishing the strategic direction of the Authority and ensuring appropriate oversight, stewardship and accountability.

3.1.8 According to the Act, the Board of the Authority shall consist of:

- a) A chairperson
- b) The Permanent Secretaries in the Ministries responsible for matters relating to Public Works, Roads, Local Government, the National Treasury and Housing
- c) Seven Members comprising representatives of each of the organizations specified in Parts I and II of the First Schedule ,of the NCA Act No. 41 of 2011. The Minister responsible for Public Works, shall appoint the seven Members from among three persons nominated by each of the organizations.
- d) Two members appointed by the Minister to represent groups with special interests in the construction industry.

3.1.9 Based on Mwongozo Guidelines 2015, the Board should be appointed through a transparent and formal process governed by the overriding principle of merit and that the Board Membership of all State Corporations shall be between seven and nine Members.

3.1.10 Further, the guidelines stipulate that, each Board Member shall formally be appointed to the Board through a Gazette Notice and thereafter an appointment letter issued from the Parent Ministry.

3.1.11 The special audit noted that, the 2015-2018 NCA Board was fully constituted. This Board, composed of 14 Board Members as detailed in **Appendix 5**. It was noted that, appointment of NCA Board of Directors was in accordance with the first schedule of the NCA Act, 2011 but contravened Section 1.1.3 of the Mwongozo guidelines on the maximum number of Board Membership which should be nine.

3.1.12 The appointment of the Board Members was done vide Gazette Notice dated 31 July, 2015. All the members of the Board accepted their appointment letters as detailed in Appendix 5.

3.1.13 According to the Second Schedule Paragraph 1 of the NCA Act No 41 of 2011, the Board shall meet at most 6 times in every financial year and not more than three months shall elapse between the date of one meeting and the date of the next meeting.

3.1.14 According to the Board Minutes availed for special audit review, the special audit noted that the Board held an average of 6 meetings in each of the years under review.

#### **NCA Board Committees**

3.1.15 According to the Second Schedule Paragraph 7 of the NCA Act No 41 of 2011, the Members may appoint Committees from among themselves or otherwise, to carry out such general or special functions as maybe specified by the Board. Further, Mwongozo Guidelines, 2015 directs that the Board shall establish not more than 4 Committees .

3.1.16 As at the time of the audit, NCA Board had established 4 Board Committees namely; Human Resource Committee, Finance, Administration and Development Committee, Technical Committee and the Board Audit Risk and Governance committee (BARGC). The composition of the Board Committees in the period under review is detailed in Appendix 5.

#### **The Board Audit Committee (Board Audit Risk Governance Committee)**

3.1.17 Section 73 (1) of the Public Finance Management Act (PFM Act), 2012 requires every National Government entity to ensure that it has appropriate arrangements in place for conducting internal audit according to the guidelines of the Accounting Standards Board;

3.1.18 Further, Section 73 (5) of the PFM Act, 2012 requires *every national government public entity to establish an Audit Committee whose composition and functions shall be as prescribed by the regulations.*

3.1.19 The special audit noted that there exists a Board, Audit Risk and Governance Committee (BARGC) and an Internal Audit Department at NCA, headed by a Manager-Internal Audit.

3.1.20 According to the Internal Audit Departmental Charter 2014, the mandate of the Board, Audit Risk and Governance Committee is to oversee Audit, Risk and Governance matters of the Authority on behalf of the Board. Further, the committee oversees: Internal Audit, Enterprise Risk Management and Performance Reviews/Appraisals.

#### **Internal Audit Reporting Structure**

3.1.21 As per the Standards on Internal Auditing and adopted by the Public Finance Management Act, 2012, an internal audit function provides an independent and objective review and advisory service to:

- a) Provide assurance to the Board that the NCA's financial and operational controls designed to manage the Authority's risks and achieve the entity's objectives are operating in an efficient, effective and ethical manner, and
- b) Assist management in improving the entity's business performance.

3.1.22 According to the NCA Internal Audit Charter Chapter Two, Section 2.2 on Independence, the internal audit reports functionally to the Board Audit Committee. The Manager- Internal Audit reports functionally to the BARGC and administratively to the Executive Director, through an Administrative Delegation. The Manager- Internal Audit therefore has direct access to the Chair and other members of the Audit Committee.

3.1.23 The internal audit department prepares a work plan at the beginning of every year and presents it to the Board, Audit, Risk, and Governance Committee for approval and full Board for information and adoption. Once approved, the department then prepares specific TORs for each client (other departments within the Authority) as per the approved work plan and shares these TORs with the client(s).

3.1.24 The internal audit department then conducts the audit based on their work plan and after execution of the audit, an exit meeting is held between the internal audit team and the client(s) and the issues that arose during the audit are discussed. The client clarifies issues that are not clear and the internal auditor gives recommendations on the unresolved issues. The client is then tasked to implement the recommendations.

3.1.25 A final audit report with the unresolved issues is prepared by the internal audit team and a copy of the report is shared with the Executive Director, before it is presented to the Board Audit Committee. The BARGC goes through the report and presents it to the Full Board, with amendments if any. The full Board can either adopt the audit

report as is or with agreed amendments. The client(s) is given time to implement recommendations which are later reviewed in a special audit and the report forwarded to Audit Board Committee.

3.1.26 During the period under review, the internal audit department conducted audits and for each audit, there were unresolved audit issues which the internal audit department gave recommendations.

3.1.27 The special audit compared the audit issues/ recommendations given by the internal audit in each of the audits done and how the issues/ recommendations were resolved/ responded to by the BARGC.

3.1.28 It was noted that out of a total of twelve audit reports with 69 issues/ recommendations, 55 issues/ recommendations had no variance with BARGC recommendations since the BARGC adopted them as they were. 5 issues/ recommendations had no variance with BARGC recommendations, though the agreed implementation date lapsed before these recommendations were implemented by the relevant departments. The remaining 9 issues/ recommendations representing 13% of the overall recommendations by the Internal Audit Department had not been fully resolved/ responded to by BARGC. An analysis of these issues/recommendations is detailed in **Appendix 6** and summarized in the table below;

**Table 3: Summary of Unresolved Audit Issues**

Date of Audit	Title of Audit	Unresolved issues
<b>Issues with lapsed Implementation Dates</b>		
January 2015	Audit Report on Registration, Compliance and Training Ref No.R,C&T/4/2014/2015	Audit item no. 1- Implementation date lapsed on 01-07-15 Audit item no. 2- Implementation date lapsed on 01-08-15 Audit item no. 5- Implementation date lapsed on 30-06-15 Audit item no. 8- Implementation date lapsed on 31-03-15 Audit item no. 9- Implementation date lapsed on June-15
<b>Issues Not Responded to by the Board's Recommendations</b>		
December 2015	Audit Report on NCA's Regional Offices	-Issuance of Compliance Certificates -Under quotation of project values -Double reporting of levy revenues
December 2015	Audit Report on ICT Department	-Inadequate ICT policy manual -Inadequate communication of ICT policy to staff -Inadequate documentation of help desk requests -Incomplete procedures of ICT equipment surrender -Documentation on some modules was incomplete -Unrestricted rights of non-essential soft-wares

## 3.2 Budgets and Budgetary Controls

### The budgetary process

- 3.2.1 Section 11(1) of the State Corporations Act (Chapter 446 laws of Kenya) requires every State Corporation to cause to be prepared and not later than the end of February in every year, submit to the Minister and to the Treasury for approval, the estimates of the State Corporation's revenue and expenditure for the following financial year accompanied by proposals for funding all projects to be undertaken by the State Corporation, or the implementation of which will continue during the financial year to which those estimates relate.
- 3.2.2 According to Section 33(3) of the NCA Act No 41 of 2011, the annual estimates of NCA is required to be approved by the Board before the commencement of the financial year to which estimates relate and thereafter the Authority should not increase or decrease the annual estimate except with Authority of the Minister.
- 3.2.3 There was no evidence that the NCA budgets had been approved in compliance with section 11(1) of the State Corporations Act. The NCA budget process is summarized in the Flow Chart in **Appendix 7**

### Budgetary allocation

- 3.2.4 A review of the NCA minutes of Board of Directors, financial statements and extracts from the Enterprise Resource Planning (ERP) system disclosed contradicting figures of the NCA'S Budget allocations as detailed below:

**Table 4: Contradicting figures of Budget Allocations**

FY	Board Minutes		Financial Statements		ERP System	
	Revenue	Expenditure	Revenue	Expenditure	Revenue	Expenditure
2014-2015	Not availed	Not availed	1,575,708,602	1,112,417,499	1,575,708,602	1,001,891,134
2015-2016	2,050,000,000	1,187,200,000	2,934,193,000	2,644,515,000	2,744,260,752	2,033,921,274
2016-2017	3,250,000,000	Not availed	3,096,448,000	1,702,270,000	4,503,751,848	3,482,936,549
			<b>7,606,349,602</b>	<b>5,459,202,499</b>	<b>8,823,721,202</b>	<b>6,518,748,957</b>

3.2.5 Further, a comparison between the budgeted amounts as per the financial statements and the budget extracts from the ERP system disclosed a cumulative variance in budgeted revenue and expenditure of Kshs.1,217,371,600 and Kshs.1,059,547,458 respectively as detailed below:

**Table 5: Budgeted Amounts in Financial Statement and ERP System**

FY		BUDGETED REVENUE		BUDGETED EXPENDITURE		
		GRANTS	OTHER INCOME (AIA)	EMPLOYEE COST	BOARD EXPENSES	OTHER COSTS
2014-2015	FINANCIAL STATEMENTS	81,608,602	1,494,100,000	530,895,515	39,500,000	542,021,985
	SYSTEM EXTRACT	81,608,602	1,494,100,000	459,490,314	25,500,000	516,900,819
VARIANCE		-	-	(71,405,200)	(14,000,000)	(25,121,165)
2015-2016	FINANCIAL STATEMENTS	258,261,000	2,675,932,000	1,344,070,000	50,410,000	1,250,034,000
	SYSTEM EXTRACT	338,260,752	2,406,000,000	520,948,604	38,204,000	1,474,768,669
VARIANCE		79,999,752	(269,932,000)	(823,121,396)	(12,206,000)	224,734,670
2016-2017	FINANCIAL STATEMENTS	575,864,000	2,520,584,000	719,194,000	62,884,000	920,192,000
	SYSTEM EXTRACT	923,031,852	3,580,719,996	1,273,369,666	109,528,253	2,100,038,630
VARIANCE		347,167,852	1,060,135,996	554,175,666	46,644,253	1,179,846,630
TOTAL VARIANCE		427,167,604	790,203,996	(340,350,930)	20,438,253	1,379,460,135
CUMULATIVE VARIANCE			1,217,371,600			1,059,547,458

3.2.6 This therefore means that the actual budget position could have been misrepresented (understated) in the financial statements of the Authority.

3.2.7 In view of the contradicting figures of budgets in the financial statements and the ERP systems coupled with failure by the NCA Management to avail approved budgets for review, the special audit could not provide assurance that the budgets of NCA for the period under review were duly approved as per the law.

- 3.2.8 In this regard and for the purpose of delivering the Terms of Reference, this special audit report has made reference to budget estimates extracted from the ERP system.
- 3.2.9 According to NCA budget extracted from the ERP system, the total budgeted revenue and expenditure was Kshs.8,823,721,202 and Kshs.6,518,748,957 respectively, for the years under review as detailed in **Appendix 8** and summarized in the table below:

**Table 6: NCA budget for financial years 2014/15 to 2016/17.**

<b>BUDGETED REVENUE (KSHS)</b>				
	<b>2014/15</b>	<b>2015/16</b>	<b>2016/17</b>	<b>Totals</b>
Government Grants	38,608,602	208,260,752	923,031,852	<b>1,169,901,206</b>
Development Partners	43,000,000	130,000,000	-	<b>173,000,000</b>
Construction Levy	1,000,000,000	1,862,500,000	2,529,999,996	<b>5,392,499,996</b>
Other Income	494,100,000	543,500,000	1,050,720,000	<b>2,088,320,000</b>
<b>TOTALS</b>	<b>1,575,708,602</b>	<b>2,744,260,752</b>	<b>4,503,751,848</b>	<b>8,823,721,202</b>
<b>BUDGETED EXPENDITURE</b>				
Employee Costs	459,490,314	520,948,604	1,273,369,666	2,253,808,584
Operational Costs	217,755,	343,950,000	978,130,333	1,539,835,533
Board Expenses	25,500,000	38,204,000	109,528,253	173,232,253
Administration Cost	255,465,619	505,792,003	1,015,491,631	1,776,749,254
Repairs and Maintenance	13,100,000	17,000,000	34,499,999	64,599,999
Purchase Land and Building	-	490,000,000	-	490,000,000
Motor Vehicle Running expenses	30,580,000	23,500,000	71,916,667	125,996,667
Office Furniture & Equipment	0.00	15,110,000	0	15,110,000
Special Plant & Machine	0.00	79,416,666	0	79,416,666
<b>TOTALS</b>	<b>1,001,891,134</b>	<b>2,033,921,274</b>	<b>3,482,936,549</b>	<b>6,518,748,957</b>
<b>Surplus</b>	<b>573,817,467</b>	<b>710,339,477</b>	<b>1,020,815,299</b>	<b>2,304,972,244</b>

- 3.2.10 Section 16(2) of the State Corporations Acts provides that where there are any surplus moneys after making the provisions required, the surplus monies shall be disposed of in such a manner as the Minister, in consultation with the Board may, in writing, direct.

3.2.11 The special audit noted that in each of the years under review, the Authority's budgets disclosed surplus funds cumulatively amounting to Kshs.2, 304,972,244 as detailed in the above table.

3.2.12 Analysis of actual revenue earned and expenditure incurred established that the Authority had a revenue surplus of Kshs.2,183,221,962 as summarized below:

**Table 7: NCA Revenue Surplus financial years 2014/15 to 2016/17.**

	2014/2015	2015/2016	2016/2017	Total(Kshs)
Actual Revenue	1,352,088,130	3,024,567,784	1,592,619,640	5,969,275,554
Actual Expenditure	773,733,253	1,725,842,179	1,286,478,160	3,786,053,592
<b>Surplus Revenue</b>	<b>578,354,877</b>	<b>1,298,725,605</b>	<b>306,141,480</b>	<b>2,183,221,962</b>

3.2.13 There were no details as to how this surplus revenue was utilized except a request by Management to the Board for opening of fixed deposit and CDS accounts. Under the circumstance, the special audit could not provide assurance that the aforementioned surplus was utilized in a lawful and effective manner.

### 3.3 Revenue Management

#### 3.3.1 Review of Revenue Policy and Revenue Collection Process

3.3.1.1 The National Construction Authority (NCA) generates revenue from activities and operations of approved services. Section 5.3 of the NCA finance and procedure manual of 2014, outlines the revenue collection and accounting procedures as detailed below:

- An invoice is raised by the Finance And Accounts Department on the amount collectable as per the supporting documents
- All Invoiced amounts are then deposited into NCAs designated accounts. The deposit slip is presented to cash office for issuance of NCA official receipts after verification of the bank deposit advice
- All cheques are payable to NCA. The cashier enters them in the cheques register, receipts and banks on or before the end of the following working day after confirmation/authorization from the Senior Accounts Manager /Finance Manager. The cashier then files deposit slips and post receipts into respective cashbooks.
- Postdated and personal cheques are not accepted.

#### 3.3.2 Sources of revenue and total revenue collected and accounted for

3.3.2.1 During the period under review, NCA collected a total revenue of Kshs.5,969,275,556 as summarized below:

**Table 8: Sources of Revenue and amounts collected**

SOURCE	2014/15 (KSHS)	2015/16 (KSHS)	2016/17 (KSHS)	TOTAL (KSHS)
GoK Grants-recurrent	38,608,602	138,260,752	435,463,696	612,333,050
Other Grants	43,526,000	88,895,561	-	132,421,561
Construction Levy	812,341,798	2,176,743,365	591,276,270	3,580,361,433
Registration of Workers	4,736,700	15,411,910	3,113,914	23,262,524
Investment Income	26,588,781	55,994,987	40,503,002	123,086,770
Contractors	35,217,840	42,956,821	39,582,322	117,756,983

SOURCE	2014/15 (KSHS)	2015/16 (KSHS)	2016/17 (KSHS)	TOTAL (KSHS)
application fees				
Contractors registration	213,864,231	187,593,571	172,211,608	573,669,410
Contractors Renewal	100,112,007	261,635,250	213,162,888	574,910,145
Conferences and Workshops	31,511,750	31,599,678	69,337,660	132,449,088
Consultancy	13,915,000	16,885,000	15,000,000	45,800,000
Miscellaneous revenue	31,665,421	8,590,888	12,968,280	53,224,589
<b>Total</b>	<b>1,352,088,130</b>	<b>3,024,567,784</b>	<b>1,592,619,640</b>	<b>5,969,275,556</b>

**GOK Grants Kshs.612,333,050**

3.3.2.2 During the period under review, the NCA received grants from the Government for the recurrent budgetary support through the Ministry of Lands, Housing and Urban Development and the Ministry of Transport and Infrastructure amounting to Kshs.612,333,050 as detailed below:

**Table 9: Table: Recurrent Grants Received from GOK**

FY	MINISTRY /DEPARTMENT	AMOUNT (KSH)
2014/2015	Ministry of Lands-State Department of Land and Housing	38,608,602
2015/2016	Ministry of Lands-State Department of Land and Housing	138,260,752
2016/2017	Ministry of Lands-State Department of Land and Housing	435,463,696
<b>Total</b>		<b>612,333,050</b>

3.3.2.3 In the financial year 2016/2017, NCA was moved from the Ministry of Lands, Housing and Urban Development to the Ministry of Transport and Infrastructure under the State Department of Public Works. However, the NCA grant for this period was channeled through the Ministry of Lands, Housing and Urban Development.

**Other Grants Kshs. 132,385,562**

3.3.2.4 NCA considers all grants it receives from donors as revenue except in cases where the donor pays for the related expenditure directly. At the start of every financial year, the Authority makes a request accompanied with a work plan to the funding agency or implementing agency. In the case of development projects, the request is done when need arises.

3.3.2.5 As per the International Development Association project paper on a proposed additional emergency credit and restructuring dated 12 March, 2014, NCA through the Ministry of Transport and Infrastructure was granted a total of Kshs.150,000,000 during the period under review from World Bank as summarized below

**Table 10: Development Grants from World Bank**

	Details of grants	Donor agency	Amount in dollars	Amount in Kshs
1	Support to NCA	World bank (NUTRIP)	0.5 million dollars	50,000,000
2	Provision of equipment to NCA	World bank (KTSSP)	1.0 million dollars	100,000,000
	Total			150,000,000

3.3.2.6 The special audit noted that out of Ksh.150,000,000, NCA utilized only Kshs.132,385,562 as summarized in the table below and the balance of Kshs.17,578,438 could not be confirmed whether it was received and accounted for since the money was utilized through the Ministry of Transport and Infrastructure.

**Table 11: Summary of grant utilization**

Year	Ministry	Under Project	Utilization	Amount (kshs)
2014/	Transport &	National Urban	Purchased 10 double	43,526,000

Year	Ministry	Under Project	Utilization	Amount (kshs)
2015	infrastructure	Transport Improvement Project(NUTRIP)	cabin Pickups	
2015/ 2016	Transport & infrastructure	Kenya Transport Sector Support Project (KTSSP).	Supply and install the ERP and the regulatory construction information system.	88,859,562
Total Receipts				132,385,562

**Construction Levy Kshs.3,580,361,434.**

- 3.3.2.7 Section 31 of the NCA Act No.41 of 2011, provided for the imposition of a construction levy not exceeding 0.5% of the project whose value exceeds Kenya Shillings Five million (5,000,000). The same Act empowered the Minister to make regulations prescribing the manner of payment of this levy.
- 3.3.2.8 Section 25 of the NCA Regulations, 2014 which became effective on 6 June, 2014 effected the 0.5% construction levy to the Authority. However, the Authority effected this regulation from 1 July 2014.
- 3.3.2.9 However, this Construction Levy was suspended in 2016 through the Eighth Cabinet meeting held on 22 November 2016. A directive was issued to the Executive Director of NCA via a letter Ref No. MOTIHUD/HUD/8/19/Vol. II/22 dated 20 December, 2016 by the Principal Secretary, State Department of Housing and Urban Development under the Ministry of Transport, Infrastructure, Housing and Urban Development. Therefore, all projects registered from 1 January, 2017 were non-leviable.
- 3.3.2.10 The special audit noted that a total of Kshs.3,580,361,433 was recorded as construction levy received for the period under review as summarized below. However the special audit could only confirm Kshs.1,769,614,848 as the construction levy received and the balance of Kshs.1,810,746,585 could not be confirmed.

**Table 12: Construction Levy**

Financial year	Levy paid/payable (Kshs)
2014/2015	812,341,798
2015/2016	2,176,743,365
2016/2017	591,276,270
<b>Total</b>	<b>3,580,361,433</b>

3.3.2.11 NCA regulations Part 6 Section 26(2) requires the levy to be paid before the commencement of the contract work. It was however noted that during the period under review, The ED authorized commencement of construction works before the levy was paid contrary to section 26(2) of the NCA Regulations Part 6. This was through signing of preliminary compliance certificates.

3.3.2.12 The special audit could not confirm the actual levy paid to NCA as bank statements requested from NCA banks through letter Ref: C.897S/ (14) dated 16 August, 2018 were not availed

**Registration of Workers Fees Kshs.23,262,524**

3.3.2.13 Section 19 of the NCA Regulation, 2014 requires that, NCA accredit and certify all construction workers and construction site supervisors in accordance with the Act. Each construction skilled workers and site supervisors are required to make applications and pay a fee of Kshs.1,000 and Kshs.2,000 respectively to the Authority.

3.3.2.14 A total of Kshs.23,262,524 was recorded by NCA as revenue received from registration of workers in the period under review as detailed below;

**Table 13: Revenue from Registration of Workers**

Financial year	Construction site workers registered	skilled workers registered	Total Revenue in Kshs
2014/2015	712	500	4,736,700
2015/2016	2344	3128	15,411,910
2016/2017	1277	2031	3,113,914
<b>Total</b>	<b>4333</b>	<b>5659</b>	<b>23,262,524</b>

**Interest from Investment income Kshs.123,086,770**

3.3.2.15 According to the NCA Act No. 41 of 2011 section 36 (1) (a), the Authority may, with the approval of the Minister invest any of its surplus funds in Government

securities. Also section 5.2(f) of the Finance Policies and Procedures Manual, 2014 states that the interest earned on these and other investments will form part of the Authority's sources of revenue.

3.3.2.16 The special audit noted that for the period under review the Authority earned interest of Ksh.123,086,770 from investment. However, NCA did not avail details of the sources of the interest earned from investment. Under the circumstances, the special audit could not provide assurance on the completeness and accuracy of the amount of Kshs.123,086,770 recorded in NCA books as interest earned from investment.

3.3.2.17 According to Section 11 of the NCA Finance Policies and Procedures Manual, 2014 before the Authority invests funds, the following procedure should be followed:

- i. Authority from the National Treasury to the Board to invest unspent /surplus funds in short term investments
- ii. Cash flow forecast from the Treasury Accountant to indicate whether there were adequate funds to invest
- iii. Investment portfolio prepared by the Head of Finance
- iv. Approved investment portfolio by the Board and the the National Treasury
- v. Approved Board Paper on the overall investment of funds with approved banks by the Board.

3.3.2.18 The special audit established that all the above procedures were not followed which contravenes section 11 of the NCA Finance Policies and Procedures Manual 2014 on investment.

#### **Contractors' application fees Kshs.117,756,983**

3.3.2.19 According to sections 17 and 18 of NCA Act, 2011, the Authority is mandated to register and regulate the conduct of both local and foreign contractors. The Act requires all contractors to submit their applications to the Authority for registration at a fee. Local contractors pay application fees of Kshs.5,000 while foreign contractors pay Kshs.50,000.00 (USD 500).

3.3.2.20 The special audit noted that a total of 22,671 contractors applied for registration in the period under review (2014-2017) and Kshs.117,756,983 was collected as contractor's applications fees for the period 2014/2015 to 2016/2017 as summarized below.

**Table 14: Total Registered Contractors**

Financial year	Contractors application	Total number of contractors
2014/2015	Foreign contractors	38
	Local contractors	10213
2015/2016	Foreign contractors	22
	Local contractors	6430
2016/2017	Foreign contractors	49
	Local contractors	5919
<b>Total</b>		<b>22,671</b>

**Contractors' Registration fees Kshs.573,669,410**

- 3.3.2.21 According to sections 17 and 18 of NCA Act, 2011, NCA is mandated to register contractors for works, buildings, from category NCA1 to NCA 8 and also local and foreign contractors. A Contractor is required to submit an application form and pay a registration fee ranging from Kshs.5,000 to Kshs.100,000 depending on category applying for, upon approval by the Authority. A registration certificate is issued valid for 3 years but renewable annually. A total of Kshs 573,669,410 was received as contractors' registration fee.
- 3.3.2.22 According to the NCA records and Minute number 8/39/FBM/27/09/2017 of the NCA Registration Committee Meeting of 27 September, 2017, a total of 49,402 local contractors were registered in the categories from NCA1 to NCA8 since inception of the Authority. NCA 1 is the highest and NCA 8 the lowest. List of local Registered contractors as at 30 June, 2017 is as detailed below;

**Table 15: List of Local Registered Contractors**

CATEGORIES	CLASSES					TOTAL
	ROADS	WATER	BUILDINGS	ELECTRICAL	MECHANICAL	
NCA1	223	149	316	168	102	958
NCA2	243	146	330	61	53	833
NCA3	385	238	465	93	52	1,233
NCA4	1416	954	1507	377	180	4,434
NCA5	1515	945	1,731	342	158	4,691
NCA6	2,942	1531	3,401	573	236	8,683
NCA7	5,239	2175	5,288	592	263	13,557

CATEGORIES	CLASSES					TOTAL
	ROADS	WATER	BUILDINGS	ELECTRICAL	MECHANICAL	
NCA8	5,324	2997	5,989	381	322	15,013
<b>Total</b>	<b>17,287</b>	<b>9,135</b>	<b>19,027</b>	<b>2,587</b>	<b>1,366</b>	<b>49,402</b>

3.3.2.23 According to section 20 of the NCA Act, 2011 it's a statutory requirement for the Authority to publish the names and particulars of all persons registered by the Board in the Kenya Gazette after the 1<sup>st</sup> of January and 1<sup>st</sup> of June in each year.

3.3.2.24 According to Part II Section 12(2) of the NCA Regulation, 2014, foreign firms apply to undertake construction works or project under category NCA 1. The special audit noted that a total of 256 contractors in NCA 1 were registered as foreign contractors. However, the NCA1 is open also to local contractors. After submission of applications and approval, a certificate of registration is issued valid for 3 years and renewable annually . The number of registered foreign contractors per class provided is summarized below. However, the special audit was not provided with the list of the foreign contractors which is contrary to Section 197 (1) (K) of the PFM Act, 2012 that provide that a Public Officer commits an offence of financial misconduct if, without lawful authority, the Officer fails to provide any information in the Officer's possession or under the Officer's control in relation to financial management of the Government Entity when required to do so.

**Table 16: Number of Foreign Contractors**

CATEGORIES	NEW APPLICATIONS FOREIGN CLASS OF WORKS					Total
	Roads	Water	Buildings	Electrical	Mechanical	
<b>NCA1</b>	<b>58</b>	<b>41</b>	<b>78</b>	<b>48</b>	<b>31</b>	<b>256</b>

**Contractors Renewal Kshs.574,910,145**

3.3.2.25 According to section 7 of the NCA regulations, persons or firms are required to submit annual applications for renewal of Certificate of Registration to the Authority in the prescribed form accompanied by the prescribed fee. During the period under review, Kshs.574, 910,145 were raised from contractors' renewal applications. According to the NCA fees schedule, the renewal fee for foreign contractors who are registered in NCA1 was USD 1500 while the local contractors ranges from Kshs.30,000 for NCA 1 to Kshs.2,500 for NCA 8.

- 3.3.2.26 However, the special audit could not confirm the accuracy of this renewal fees since amounts paid by each of the foreign contractors, the bank statements and list of contractors was not availed contrary to Section 197 (1) (K) of the PFM Act, 2012 that provides that a Public Officer commits an offence of financial misconduct if, without lawful authority, the Officer fails to provide any information in the Officer's possession or under the Officer's control in relation to financial management of the Government Entity when required to do so.
- 3.3.2.27 The registration of a foreign firm applying to commence construction works or projects under NCA 1 is valid for the period of the construction works contract or the project in question and is usually renewable every calendar year where applicable. The application for renewal is submitted in writing at least thirty days before the expiry of the license as per the National Construction Authority's Regulations sections 12 and 13.
- 3.3.2.28 NCA did not provide a list of all the contractors' renewal and how much each contractor paid for the renewal services for the period under review.

**Conferences, Workshops and Seminars Kshs.132,449,088**

- 3.3.2.29 NCA offers training and capacity building workshops and seminars to the contractors and construction workers. This cost is subsidized using the revenues generated from the registration and application fees. The special audit noted that Kshs.132,449,088 was generated from conferences, workshops and seminars during the period under review.
- 3.3.2.30 The special audit established that most of the payments for conferences, workshops and seminars were paid by use of mobile money transfer service, M-pesa to various NCA bank accounts, However, these M-pesa payment records were not retrieved by the cashier for accounting purposes.

**Consultancy Kshs.45,800,000**

- 3.3.2.31 NCA offered specialized consultancy to 20 Huduma Centres and the National Quality Control Laboratory. During the period 2014/2015 to 2016/2017, the records indicate that the Authority collected Kshs.45,800,000 from consultancies. However, the special audit could not confirm the accuracy of this amount as the invoices raised for consultancy services were not availed. NCA did not provide the invoices issued for consultancy services to the special team.

### Miscellaneous income Kshs.53,224,589

3.3.2.32 A total of Kshs.53,224,589 was raised as miscellaneous income for the period under review. This revenue consists of tender, sponsorship, appeals, foreign exchange gains and levies and fees (replacement of certificates) as summarized in the table below.

**Table 17: Miscellaneous Income**

Miscellaneous revenue	2014/2015	2015/2016	2016/2017	Total (kshs)
Tender	2,507,406	42,000	8,000	2,557,406
Sponsorship	150,000	3,622,500	3,974,280	7,746,780
Appeals/contractors upgrade	1,283,500	4,125,350	8,986,000	14,394,850
Foreign Exchange Gains	27,499,515	323,000		27,499,515
Levies and fees (Replacement of certificates)	225,000	478,038		1,026,038
<b>Total</b>	<b>31,665,421</b>	<b>8,590,888</b>	<b>12,968,280</b>	<b>53,224,589</b>

### Recording of Revenue

3.3.2.33 The special audit analyzed the cashbooks and compared the amounts recorded as receipts in the cashbooks with the amounts receipted. The receipts issued were sampled from the regions that the audit team visited.

3.3.2.34 A total of Kshs.86,220,893 detailed in **Appendix 9** were reviewed. Out of these, the audit noted that, receipts totaling Kshs.83,265,369 were properly banked, recorded and accounted for as per the cashbook availed. The remaining receipts, had irregularities amounting to Kshs.2,955,524 as follows.

### Irregularities on Revenue Banking and Recording: Kshs.2,955,524

3.3.2.35 The special audit noted specific irregularities on the receipts reviewed as listed below:

**Table 18: Irregularities on Revenue Banking and Recording**

IRREGULARITY	AMOUNT (KSHS)
Under-banked Revenue	1,576,212
Double Receipting	506,115

IRREGULARITY	AMOUNT (KSHS)
Under-Recorded Receipts	153,225
Other weaknesses	719,972
<b>Total Irregularities</b>	<b>2,955,524</b>

**Under-banked Revenue- Kshs.1,576,212**

3.3.2.36 The receipts recorded in the cashbook availed were compared with the actual receipts. The audit noted that, a total of Kshs.1,576,212 was revenue that had allegedly been banked but a different amount had been receipted. The total amount receipted was Kshs.1,963,396 while the amounts recorded in the cashbook was Kshs.387,183.65. A detailed analysis of this under-banked revenue is shown in **Appendix 9**.

**Double Receipting- Kshs.506,115**

3.3.2.37 The audit noted that reviewed receipts amounting to Kshs.506,115 had been recorded twice in the cashbook. A detailed analysis of these receipts is shown in **Appendix 9**.

**Under-Recorded Receipts: Kshs.153,225**

3.3.2.38 The audit noted that there was under- recording of receipts which amounted to Kshs.153,225. This was the difference between the recorded amounts in the cashbooks totaling Kshs.244,500 and the amounts as per the receipts, amounting to Kshs.91,275. A detailed analysis of these under-recorded receipts is shown in **Appendix 9**.

**Other weaknesses noted- Kshs.719,972**

3.3.2.39 The audit established that receipts amounting to Kshs.719,972 had the payee's name or purpose of the amount receipted, differing with what is indicated in the cashbook. A detailed analysis of these inconsistencies is shown in **Appendix 9**.

**3.3.3 Levy paid and 2015/2016 receivables of Kshs.1,644,891,596**

3.3.3.1 It was established that, Kshs.5,240,603,029 was the levy payable for financial years 2014/2015, 2015/2016 and 2016/2017 while Kshs.3,595,711,433 was the levy

received and banked into the NCA bank accounts by the contractors for the periods under review as summarized below:

**Table 19: Levy Paid and Unpaid**

Financial Years	Levy payable (Kshs)	Levy paid (Kshs)	Levy unpaid (Kshs)
2014 /2015 to 2016/ 2017	5,240,603,029	3,595,711,433	1,644,891,596

3.3.3.2 According to the NCA Act, 2011, section 26(5), any amount of construction levy which remains unpaid after a period of three months from the date on which it falls due shall be, summarily recoverable from the owner as a civil debt. Therefore, NCA had an outstanding levy receivable of Kshs.1,644,891,596

3.3.3.3 The special audit established that , the NCA registered projects from both the Head Quarter and the Regional Offices. Once a developer had paid all dues, he /she was allowed to proceed with development. The special audit also established that project developers were allowed to continue with their construction process even when the levy had not been fully paid. This led to accumulation of unpaid levies. The audit further established that, officers would give interim certificates to developers which eventually led to loss of revenue in NCA.

**Number of Bank accounts, signatories and the signing mandates**

3.3.3.4 The PFM Act 2012 section 197(1) (k) requires that, a public officer employed by the National Government or a National Government entity commits an offence of financial misconduct if, without lawful Authority, the officer fails to provide any information in the Officer’s possession, or under the officer’s control, in relation to the financial management, financial performance, or banking activities of that Government or entity or in relation to the management or control of an asset or liability of that government or entity when required to do so, except where such refusal or failure is required or authorized by this Act or any other written law.

3.3.3.5 The special audit noted that, NCA operated eleven (11) different bank accounts for the period under review. A summary of the bank accounts, status and signatories are summarized below:

Table 20: Summary of NCA Bank Accounts, Status and Signatories

ACCOUNT NAME	ACCOUNT TYPE	ACCOUNT NUMBER	ACCOUNT PURPOSE	DATE OPENED	STATUS	DATE CLOSED	SIGNATORIES
KCB-KSH	Current	1136368019	Operations	11-09-12	Active	operational	Daniel Manduku Christine Kirimi James Kilonzi
KCB-KSH		01178700763	Mortgage	11-02-16	Active	operational	Daniel Manduku Christine Kirimi James Kilonzi
CBA-KSH	Current	7012550017	Operations	15-03-13	Active	operational	Daniel Manduku Christine Kirimi James Kilonzi
CBA-KSH	Current	7012550059	Levy	03-11-14	Active	operational	Daniel Manduku Christine Kirimi James Kilonzi
CBA-USD	Current	7012550022	Operations	15-03-13	Active	operational	Daniel Manduku Christine Kirimi James Kilonzi
Co-operative Bank-KSH	Current	01141163043900	Levy		Active	operational	Daniel Manduku Christine Kirimi James Kilonzi
Co-operative Bank-KSH	Current	01141163043901	operations		Active	operational	Daniel Manduku Christine Kirimi James Kilonzi
Consolidated Bank-KSH		10011202002051	Car loan	07-09-17	Active	operational	Daniel Manduku Christine Kirimi James Kilonzi
Equity Bank-KSH	Current	0170260644217	Operations		Closed	5-01-18	Daniel Manduku Christine Kirimi James Kilonzi
NBK-KSH	Current	01001085330600	Levy	08-10-14	Closed	5-01-18	Daniel Manduku Christine Kirimi James Kilonzi
HFCK	Current	7040001813	Levy		Closed	5-01-18	Daniel Manduku Christine Kirimi

ACCOUNT NAME	ACCOUNT TYPE	ACCOUNT NUMBER	ACCOUNT PURPOSE	DATE OPENED	STATUS	DATE CLOSED	SIGNATORIES
							James Kilonzi

- 3.3.3.6 We were not provided with the signing mandates of the above bank accounts operated by NCA for the period under review.
- 3.3.3.7 The special audit team requested for bank statements but only eight (8) bank statements out of the 11 accounts requested were availed. The bank statements received were for consolidated bank account number 10011202002051, Equity Bank account number 017026064421 and National bank account number 01001085330600.
- 3.3.3.8 The Public Finance Management (National Government Regulations), 2015, section 90 (1) requires, Accounting Officers to ensure monthly bank account reconciliations are conducted for each bank account and a copy of the bank reconciliation statement submitted to the National Treasury with a copy to the Auditor-General not later than 10<sup>th</sup> day of the subsequent month.
- 3.3.3.9 There was no evidence, that NCA Management, prepared and submitted to the National Treasury and the Auditor-General, bank reconciliations for the following bank accounts contrary to the Public Finance Management (National Government Regulations), 2015, section 90 (1).

**Table 21: Bank Reconciliation Statements Not Provided**

ACCOUNT NAME	ACCOUNT NUMBER	ACCOUNT PURPOSE
KCB-KSH	1136368019	Operations
KCB-KSH	01178700763	Mortgage
CBA-KSH	7012550017	Operations
CBA-USD	7012550022	Operations
Co-operative Bank-KSH	01141163043901	Operations
Consolidated Bank-KSH	10011202002051	Car loan

### 3.3.4 Project Registration

3.3.4.1 It was established that, a total of 11,034 projects with project value of Kshs.516,859,199,395 were registered by the NCA for the regions visited as detailed in Appendix 10 and summarized below :

**Table 22: Registered Projects and Total Project Values**

Region	Project value	Levy charged	No. Of projects
Nairobi	306,315,258,006	963,880,813	3,905
Central Nyanza	40,807,387,507	179,259,511	645
North Rift	13,099,529,773	59,733,977	447
Western	14,774,471,168	56,876,044	352
Kitui	2,311,248,172	9,617,428	141
Machakos	8,594,686,637	36,363,184	228
Makueni	740,255,000	2,884,126	59
Mt. Kenya	38,470,694,413	136,201,372	1,503
Coast Region	48,814,833,237	167,721,454	933
Central Rift	24,886,965,932	100,219,191	1,882
Central Eastern	8,935,891,320	24,227,444	504
South Nyanza	6,817,258,878	21,080,861	299
Upper Eastern	2,290,719,351	11,549,443	136
<b>Totals</b>	<b>516,859,199,395</b>	<b>1,769,614,848</b>	<b>11,034</b>

3.3.4.2

the special audit established that, the financial statements for NCA for the period under review disclosed Kshs.3,580,361, 433 as total levy invoiced while records in the region disclosed Kshs.1,769,614,848 as the total levy invoiced. There was therefore un-explained difference of Kshs.1,810,746,585 being amount of levy recognized in the Financial Statements but not supported by records at the Regional Offices.

### 3.3.5 Valuation of projects, levy charged, paid and outstanding

3.3.5.1 Section 31 (1) and (2) of the NCA Act , 2011, on imposition of levy requires that the Minister may, by notice in the Gazette, impose a levy to be known as the construction levy on construction work carried out by persons registered under the NCA Act, 2011. The levy should be in an amount not exceeding an equivalent of 0.5%, of the value of any contract whose value exceeds five million shillings.

3.3.5.2 NCA through a Gazette Notice dated 06 June, 2014 imposed this levy and the suspension of the same came through a Public Notice in the Standard Newspaper dated 30 January, 2017. The Public Notice took effect from 01 January, 2017. The special audit analyzed levies charged ,received, and outstanding on projects registered between 06 June, 2014 and 01 January, 2017

3.3.5.3 The special audit noted that, before the levy was charged on any project, the Authority took a project through a registration process to ascertain issues that included the type of project, registration of contractors of the project, project sum and commencement date of the project. These issues formed the basis of whether the project was leviable or not leviable. Each project was assigned a unique registration number, unique to the project.

3.3.5.4 The special audit reviewed documents for projects registered in Central, North Rift, Western, Nyanza, Upper Eastern, Central, Eastern, Nairobi and Coast Regions.

3.3.5.5A A total of 2,213 project registration files with contract sums totaling Kshs.50,038,818,464 were reviewed, as detailed in **Appendix 11**. Out of these, the audit noted that, the project registration files with contract sums totaling Kshs.31,101,892,626 were properly maintained and recorded. The remaining projects with contract sums totaling Kshs.18,936,925,838 had irregularities amounting to Kshs.152,948,966. These irregularities are summarized and explained in the sections below.

#### **Irregularities on project registration: Kshs.152,948,966**

3.3.5.6 The special audit reviewed the project registration files and identified the following irregularities :

<b>Irregularity</b>	<b>Amount (Kshs)</b>
• Unsupported invoicing of levies	57,161,615
• Projects not in the Accounts Receivables' List	22,240,502
• Overstated Accounts Receivables	18,319,374

• Lack of evidence for levy paid	6,457,944
• Leviale Projects not charged levy	8,083,754
• Outstanding levy	6,344,690
• Levy invoiced but not paid	32,293,092
• Undervalued Project Levy	<u>2,047,991</u>
<b>Total Irregularities on project registration</b>	<b><u>152,948,966</u></b>

**Unsupported invoicing of levy- Kshs.57,161,615**

3.3.5.7 The special audit compared the list of projects registered availed by the Registration and Compliance Department with the lists availed by the Regional Coordinators. It was noted that, a total of 366 projects appearing in the Regions list with contract sums amounting to Kshs.21,004,760,946 were not reflected in the Registration and Compliance list. These projects could also not be confirmed since the specific project files were not availed. The special audit could therefore not confirm the accuracy of levies invoiced on these projects amounting to Kshs.57,161,615.

3.3.5.8 These projects are detailed in **Appendix 12** and summarized in the table below:

**Table 23: Unsupported invoicing of levy**

REGION	PROJECTS IN REGIONS' LISTS NOT IN R & C LIST		
	No. of Projects	Contract Sum	Levy Invoiced
Lower Eastern	23	1,642,822,823	3,170,508
Central Eastern	50	688,031,959	2,368,109
Coast	293	18,673,906,163	51,622,998
<b>TOTALS</b>	<b>366</b>	<b>21,004,760,946</b>	<b>57,161,615</b>

**Projects not in the Accounts Receivables List- Kshs.22,240,502**

3.3.5.9 The special audit noted that there were projects whose records were availed in the Regional and Liaison Offices but were missing from the receivables list maintained at the Headquarters. These projects had levies amounting to Kshs.22,240,502. Details of these projects are in **Appendix 12**.

**Overstated Accounts Receivables -Kshs. 18,319,374**

3.3.5.10 A review of the project registration documents, maintained by the respective Regional Offices, established instances where developers paid levies in instalments. The receivable balances indicated in the project registration documents at the Head Office was Kshs.18,319,374 more than that reflected in the project registration documents at the Regional Offices for the financial year 2015/2016. Details of these projects are in **Appendix 13**.

**Lack of evidence for levy paid- Kshs.6,457,944**

3.3.5.11 A total of 67 projects with levies invoiced amounting to Kshs.6,457,944 were recorded as having been paid. The special audit, however noted that, the project files for these projects did not have supporting documents for the payments made such as receipts and deposit slips. These projects are detailed in **Appendix 14** and summarized in the table below.

**Table 24: Projects with no Evidence of Levy Paid**

Region	No. Of projects	Contract sum (kshs)	Levy invoiced (kshs)
Lower Eastern	51	913,365,181	4,566,834
Central Eastern	10	164,128,226	820,672
Coast	06	214,087,660	1,070,438
<b>TOTALS</b>	<b>67</b>	<b>1,291,581,067</b>	<b>6,457,944</b>

**Leviable Projects not charged levy: Kshs.8,083,754**

3.3.5.12 The special audit noted that a total of 69 projects with a total contract sum of Kshs.1,599,060,224 that were leviable, were not charged levy. The levy that ought to have been charged (0.5%) was Kshs.8,083,754. The reasons indicated on the project files for not charging the levy was that the project either commenced before 06 June 2014, after 01 January 2017 or that the project sum was less than Kshs.5,000,000. The special audit, however, noted that commencement dates for these projects were within the leviable period and the project sum was above Kshs.5,000,000.

3.3.5.13 The special audit, further noted that, the Authority has no standardized way of determining the commencement dates during registration of projects. The Authority's compliance officers chose to rely either on the contract agreements

between the developer and the Contractor, the Nema license and/or approvals from the County Government. These projects are detailed in **Appendix 15** and summarized below.

**Table 25: Leviale Projects not Charged Levy**

Region	No. Of projects	Projects' contract sum	Non- charged levy
Lower Eastern	13	198,942,435	994,712
Upper Eastern	18	347,558,558	1,737,792
Coast	01	42,000,000	210,000
Central Rift	08	112,852,140	564,261
Mt. Kenya	05	74,308,995	459,999
South Nyanza	24	823,398,095	4,116,990
<b>TOTAL</b>	<b>69</b>	<b>1,599,060,224</b>	<b>8,083,754</b>

**Outstanding levy- Kshs.6,344,690**

3.3.5.14 A total of 71 projects had a difference of Kshs.6,344,690 between the levies charged and levies paid. This was due to the Regional and Liaison Offices having allowed the payments of the levy to be done in installments without the express permission of the Executive Director. These projects are detailed in **Appendix 16** and summarized below.

**Table 26: Outstanding Levy**

Region	No. Of projects	Levy charged	Levy paid	Outstanding levy
Lower Eastern	11	1,661,892	546,291	1,115,600
Upper Eastern	16	1,710,905	783,318	927,586
Coast	06	2,314,625	769,068	1,545,556
Central Rift	18	1,960,836	1,173,253	787,786
Mount Kenya	9	1,804,574	1,045,938	720,678
South Nyanza	11	1,945,949	698,466	1,247,482
<b>TOTAL</b>	<b>71</b>	<b>11,398,782</b>	<b>5,016,337</b>	<b>6,344,690</b>

**Levy invoiced but not paid- Kshs.32,293,092**

3.3.5.15 The special audit noted that a total of 236 projects had the levy invoiced but as at the time of audit, no amount of payment had been received by NCA. The projects' contract sums amounted to Kshs. 6,305,944,167, with the unpaid levy totaling Kshs.32,293,092. These projects are detailed in **Appendix 17** and summarized below.

**Table 27: Levy Invoiced but not Paid**

Region	No. Of projects	Projects' contract sum (Kshs)	Levy invoiced/unpaid (Kshs)
Lower Eastern	40	803,647,675	4,018,244
Upper Eastern	37	1,058,632,861	5,249,270
Coast	45	1,779,846,653	8,899,233
Central Rift	58	1,132,388,328	6,469,202
Mount Kenya	29	662,927,535	3,314,636
South Nyanza	27	868,501,115	4,342,505
<b>SUB TOTAL</b>	<b>236</b>	<b>6,305,944,167</b>	<b>32,293,092</b>

3.3.5.16 Out of the above unpaid levies, it was further noted that, two projects registered in Lower Eastern and Coast Regions, had undervalued contract sums thus leading to understated levy invoiced. The details for the two projects are as shown in the table below.

**Table 28: Levy Invoiced on wrongly valued Projects**

Registration no.	As per regions' list (Kshs)		As per project file (Kshs)	
	Contract sum	Levy invoiced	Contract sum	Levy invoiced
371041560489	30,780,000.00	153,900	42,644,925	213,224
301061560241	31,551,610.00	657,758	152,599,867	762,999

**Undervalued Project Levy- Kshs.2,047,991**

3.3.5.17 The special audit established instances of under valuation of registered projects. Contract sums were reduced to either avoid or reduce the amount of levy to be paid. The special audit established that 43 projects with project sums of Kshs.809,804,529 were undervalued . The levy invoiced and paid was less than what ought to have been paid. These projects are detailed in **Appendix 18** and summarized below.

**Table 29: Levy for Undervalued Projects**

Region	No. Of projects	Projects' contract sum (Kshs)	Levy invoiced/unpaid
Central Rift	10	179,786,487	256,760
Mt. Kenya	15	401,249,053	1,062,114
South Nyanza	18	228,768,989	729,117
<b>SUB TOTAL</b>	<b>43</b>	<b>809,804,529</b>	<b>2,047,991</b>

**Other Control weaknesses noted**

3.3.5.18 Other controls weakness noted included poor record keeping and incomplete project registration files. Project files lacking crucial documents such as receipts, deposit slips, invoice letters, compliance certificate, , project drawings, NEMA license/ approval and/ or County approval made it difficult for the audit team to independently verify them. A total of 376 project files with a contract sum amounting to Kshs.6,439,152,813 among those reviewed lacked one or more of the above mentioned documents, thus leading to difficulty in ascertaining the value of the projects, levy charged, paid and/or outstanding. The details of these projects are in **Appendix 19**

3.3.5.19 An analysis of the list of projects availed by the Regions and the Registration And Compliance Department at the NCA revealed that a total of 21 projects files with a contract sum amounting to Kshs.1,256,569,177 had similar project registration numbers. Details of these projects are detailed in **Appendix 19**

**Regional Revenue Receipts**

3.3.5.20 Revenue was collected using the receipts issued from NCA Head Quarters. According to the register of receipts books availed to the special audit team in Kisumu Regional office, the receipts which were dispatched to Kisumu Regional Office are as follows:

**Table 30: Receipt Books Dispatched to Kisumu Regional office**

Date Issued	Serial number	Serial number	Received By	Type of Revenue	Amount collected from the receipt book (Kshs)	Remarks
Not indicate	33651	33700	Not indicat	Various revenue	1,045,475	Availed

Date Issued	Serial number	Serial number	Received By	Type of Revenue	Amount collected from the receipt book (Kshs)	Remarks
			e			
Not indicate	22301	22530	,,	Various revenue	1,100,314	Availed
12-10-15	28201	28250	Moses	Various revenue	2,668,398	Availed
12-10-15	28251	28300	Moses	Various revenue	15,173,274	Availed
17-11-15	29551	29650	Cheptingwa	Various revenue	1,066,938	Availed
04-02-16	31551	31600	George	Various revenue	2,119,018	Availed
04-02-16	31601	31650	George	Various revenue	1,822,032	Availed
14-07-16	C9828951	C9829000	Khisa	Various revenue	Not availed	Not availed
14-07-16	C9741501	C9741550	Khisa	Various revenue	Not availed	Not availed
25-07-16	C9990151	C9990200	Khisa	Various revenue	Not availed	Not availed
25-07-16	C9990050	C9990100	Khisa	Various revenue	Not availed	Not availed
25-07-16	33851	33900		Various revenue	1,118,413	Availed
					26,113,862	

3.3.5.21 The special audit noted that, Kisumu Regional Office did not maintain a complete record of all the utilized receipts as indicated in the table above.

#### Revenue Collection- Kshs.47,376,030

3.3.5.22 A total of Kshs.47,376,030.81 was collected as revenue from the various sources in the North Rift Regional Office for the period under review as summarized below and detailed in **Appendix 20**.

**Table 31: Revenue Collected at North Rift Regional Office**

Purpose of the Receipts	Amount collected for the period under review
Construction Levy	31,515,831
Renewal fee	6,290,000
Certificate fee	712,500
Accreditation	1,111,500
Category fee	2,868,000
Contractors Training	39,400
License renewal	2,291,000
Lost Certificate	25,000
Penalty fee	440,000
Registration fee	46,300
Upgrading	45,000
Application	1,991,500
<b>Total</b>	<b>47,376,031</b>

- 3.3.5.23 The audit team compared the summary of the receipt books issued to North-Rift Regional Office from the NCA Head Quarters and established that Kshs.18,742,956 was received from various sources of revenue as detailed in **Appendix 21**.
- 3.3.5.24 According to the records from the NCA Head Quarters, Kitale Liaison Office was issued a receipt book with the serial number C9741551 to C9741600 on 14 July, 2016. However, the records in Kitale Liaison Office confirmed that the receipt book was never received at the Liaison Office.
- 3.3.5.25 In addition to the above receipt books, the special audit team established that receipt books amounting to Kshs.28,633,075 were issued to Kisumu Office without being recorded at the NCA Head Quarters as detailed in **Appendix 22**.
- 3.3.5.26 Out of the Kshs.31,515,831 construction levy obtained from the monthly summary returns of receipts issued, the special audit team confirmed payment of construction levy totaling to kshs 14, 858,813 from the availed payment receipts and bank pay in slips. This was done by examining the project files and supporting documentation availed at the Regional Office as detailed in **Appendix 23**.

### **Receipts issued at the the NCA Head Quarters and Received at the Regional Offices**

- 3.3.5.27 The special audit established that a total of 2,702 receipt books were issued to the Lower Eastern, Central Eastern and Coast Regional Offices as detailed in **Appendix 24** .
- 3.3.5.28 Out of the receipts issued by the NCA Head Quarters, it was noted that 12 receipt books that had been issued to the Regional Offices had not been received in the Regions as detailed in **Appendix 24**.
- 3.3.5.29 It was further noted that, 44 receipt books utilized at the Regional Offices did not appear in the the NCA Head Quarters records. The revenue receipted on these books amounted to Kshs.66,872,193. Details of the receipt books are shown in **Appendix 24**.

## **3.4 Expenditure and Utilization of the funds**

### **3.4.1 Total expenditure for period under review**

- 3.4.1.1 Sections 68(1) and (2) (a to e) of the Public Finance Management Act (2012) outline the responsibility of accounting officers in as far as usage of a Department's resources are concerned. Further, Section 79 (1) and (2) of the Public Finance Management Act (2012) highlights the obligations of the Public Officers, when carrying out a responsibility or exercising power under the Act. The audit team noted that the provisions of the above Acts were not complied with, as discussed below.
- 3.4.1.2 Utilization of the Authority's funds is guided by the NCA Finance Policies and Procedure Manual, 2014 and the Finance and Procedure Manual, 2017 which seek to prescribe the necessary guidelines and procedures to guide the Financial Management Systems and to establish the internal control structure for the NCA. The Manuals also outline the minimum standards that all NCA staff are expected to observe in all expenditure transactions.
- 3.4.1.3 As noted earlier, Kshs.5,969,275,556 was the total income available for utilization by NCA for the period under review. Out of these amount, NCA utilized Kshs.3,786,053,592 leaving a balance of Kshs.2,183,221,964 as detailed below;

### 3.4.2 Utilization of Kshs.3,786,053,592

3.4.2.1 The special audit established that NCA does not maintain a vote book and therefore it was difficult for the special team to confirm utilization per vote allocated and applied against the AIE issued.

3.4.2.2 According to the financial statements, NCA incurred expenditures amounting to Kshs.3,786,053,592 as summarized below, for the period under review.

**Table 32: Expenditures incurred**

ITEM	2014/2015 (Kshs)	2015/2016 (Kshs)	2016/2017 (Kshs)	Totals (Kshs)
Employee Cost Total	255,938,574	379,524,747	467,694,991	1,103,158,312
Operating expenses	244,421,446	914,390,950	379,406,612	1,538,219,008
Board Expenses	32,802,428	48,220,622	57,420,116	138,443,166
communications	11,908,274	20,966,079	22,198,698	55,073,051
Travelling and accommodation	107,459,138	145,183,504	147,408,642	400,051,284
Advertising and public relation	51,881,957	86,117,833	62,717,957	200,717,747
Insurance cost	16,060,001	23,630,684	36,958,946	76,649,631
Depreciation	49,354,445	100,894,541	106,271,897	256,520,883
Taxes	3,906,990	6,913,219	6,400,301	17,220,510
Total expenditure	773,733,253	1,725,842,179	1,286,478,160	3,786,053,592
surplus/deficit	578,354,878	1,298,725,606	306,141,480	2,183,221,964

### Unaccounted for Expenditure- Kshs.1,842,672,546

3.4.2.3 Out of the total expenditure incurred of Kshs.3,786,053,592, an amount of Kshs.2,449,577,432 related to financial years 2014/15 and 2015/2016 .Out of the expenditure incurred of Kshs.2,449,577,432 ,NCA availed payment vouchers amounting to Kshs.656,902,885 while the balance Kshs.1,842,672,546 was not supported with payment vouchers.

3.4.2.4 Out of the payment vouchers availed of Kshs.656,902,885, irregularities were noted in payment vouchers amounting to Kshs.99,957,862 and USD.12,000 comprising Kshs.39,855,113 for financial year 2014/2015 and Kshs.60,102,749 for financial year 2015/2016 as follows:

**Table 33: Total Payment Vouchers availed**

Payment Vouchers	2014-2015 (Gross Amount)		2015-2016 (Gross Amount)	
	Kshs	USD	Kshs	USD
Fully Accounted for	176,933,631	39,594	380,011,390	8,085
Irregular Payments	39,855,113	0	60,102,749	12,000
<b>TOTALS</b>	<b>216,788,745.</b>	<b>39,594</b>	<b>440,114,140.</b>	<b>20,085</b>
<b>TOTAL PVs FOR THE TWO YEARS</b>			<b>656,902,885</b>	<b>59,679</b>

**Irregularly paid Vouchers**

3.4.2.5 Out of the total Payment Vouchers availed of Kshs.656,902,885 and USD.59,679, the audit team noted that vouchers for financial years 2014/2015 amounting to Kshs.39,855,113 and 2015/2016 amounting to Kshs.60,102,749 and USD.12,000 were irregularly paid vouchers. Thus the total irregularly paid vouchers for the two years amounted to Kshs.99,957,863 and USD.12,000. The analysis for these vouchers is detailed in **Appendix 25** and summarized below;

	Kshs	USD
• Unsupported Payments	54,833,972	12,000
• Overpayments	8,499,287	0
• Irregular Procurements' Payments	34,638,347	0
• Vouchers with similar numbers	1,986,256	0
<b>Total Irregularly Paid Vouchers</b>	<b>99,957,863</b>	<b>12,000</b>

**Unsupported Payments- Kshs.54,833,972 and USD 12,000**

3.4.2.6 Payment Vouchers amounting to Kshs.54,833,972 and USD.12,000 were made without sufficient supporting documents and thus done contrary to the provisions of Section 71 of the PFM Act (2012). Details of these payments are as summarized below and detailed in **Appendix 25**

	2014-15	2015-16
• Lack of Approvals	4,486,556	13,511,000
• Insufficient Supporting Document	4,364,351	19,617,717 and \$12,000
• Inconsistencies in Documents	5,401,344	7,453,002
<b>Total Unsupported Payments</b>	<b>14,252,252</b>	<b>40,581,719 and \$12,000</b>

3.4.2.7 It was noted that supporting documents such as approvals, original invoices, LPOs, LSOs and quotations for the above payments were not availed.

**Over-Payments: Kshs.8,499,287**

3.4.2.8 Payment Vouchers amounting to Kshs.8,499,287 were made exceeding the approved amounts, contrary to the provisions of Section 71 of the PFM Act (2012). Details of these payments is as summarized below and detailed in **Appendix 25**

	2014-15(ksh)	2015-16(ksh)
• Double Payments	476,165	358,092
• Wrongly Applied Rates	1,178,000	2,476,835
• Non-deducted VAT	-	4,010,194
<b>Total Over-Payments</b>	<b><u>1,654,165</u></b>	<b><u>6,845,121</u></b>

**Irregular Procurements' Payments: Kshs.34,638,347**

3.4.2.9 Payment vouchers totaling Kshs.34,638,347 were made in respect to procurement of goods and services. According to Section 104 of the Public Procurement and Asset Disposal Act 2015, an Accounting Officer of a procuring entity is required to adhere to procedures set out in sub sections (a) to (c) of the Public Procurement and Asset Disposal Act 2015 with respect to direct procurement. The special audit, however, established that the payments amounting to Kshs.34,638,347 were made for procurements sourced directly from suppliers, contrary to the provisions of the Public Procurement and Asset Disposal Act 2015. These procurements are summarized below and detailed in **Appendix 25**

	2014-2015	2015-2016
• Direct Procurement	9,493,530	7,973,292
• Wrong Procurement Method	-	2,716,360
• Irregular Awarding of RFQs	334,800	-
• Requisition Irregularities	<u>14,120,365</u>	-
<b>Total Irregular Procurements</b>	<b><u>23,948,695</u></b>	<b><u>10,689,652</u></b>

**Payment vouchers with similar numbers: Kshs.1,986,256**

3.4.2.10 The special audit further established that, payment vouchers amounting to Kshs.1,986,256 had similar payment voucher numbers with other payment vouchers that had already been paid. A detailed analysis for the three vouchers is shown in **Appendix 25**.

### 3.4.3 Other Irregularities in Utilization/Expenditure of funds

3.4.3.1 The special audit identified other irregularities in regard to utilization of funds at NCA as summarized below:

**Table 34: Other Irregularities noted in Utilization**

<b>Expenditure item</b>	<b>AMOUNT (KSHS)</b>
Contracted services	716,000
Allowances for Kibera NYS Youths	8,607,600
Unsupported wages	69,296,568
Overpayments of salaries	5,386,766
Unsupported imprest	50,646,536
Cash Encashment	457,782,866
Rapid response initiative	64,630,600
Procurement of goods & services	236,029,800
Consultancy services (JKUAT)	804,600
Standing imprest	18,790,343
<b>TOTAL</b>	<b>912,691,679</b>

#### **Contracted Services**

3.4.3.2 Contracted services are services which have been outsourced from other professional service providers. This includes security services and cleaning services. In the financial year 2014/2015, a total of Kshs.2,462,595 was paid as expenses for contracted services. Included in this contracted services, are costs for Lunch allowance for transporting cash from bank to the office of Kshs.716,000. However the special audit was not provided with the payment vouchers and schedule to support the payments and therefore the amounts were not accounted for.

### Allowances for Kibera NYS Youths

3.4.3.3 The following payment vouchers amounting to Kshs.8,607,600 in regard to allowances for Kibera NYS Youths were not provided and therefore the amounts were not accounted for.

**Table 35: Vouchers Not Availed- Allowances for Youth**

<b>VOUCHER NUMBER</b>	<b>AMOUNTS (KSHS.)</b>
1928	1,434,600
1929	1,434,600
1930	1,434,600
1931	1,434,600
1932	1,434,600
1933	1,434,600
<b>TOTAL</b>	<b>8,607,600</b>

### Unsupported payments for wages Kshs.69,296,568

3.4.3.4 The Authority paid wages to the seconded staff from the Ministry of Transport and Infrastructure, contracted casuals, interns, and attaches totaling to Kshs.69,296,568 between July 2014 to June 2017 as detailed in **Appendix 26**. However, the Authority did not provide documents to support these payments. The amounts of Kshs.69,296,568 therefore remained unaccounted for by the organization.

3.4.3.5 The special audit noted that, the National Construction Authority failed to maintain proper records on wages paid. This was contrary to section 68 (2) (b) of the PFM Act (2012) which requires the accounting officers in carrying out their responsibilities, should ensure proper financial and accounting records are kept.

### Overpayment of Salaries-Kshs.5,386,766

3.4.3.6 The special audit reviewed the payroll for the period June 2013 to February 2018 and noted that there were overpayments of Ksh.5,386,766. The staff list overpaid is as detailed in **Appendix 27** and summarized in the table below. The staff recruited during this period were paid full salary for the whole month on their first appointment while the hiring dates was not from start 1<sup>st</sup> date of that month. This was contrary to section 5.6.3(i) of the Human Resource Policies and Procedures

Manual of 2017 which requires that an employee on first appointment will be paid salary with effect from the date of assumption of duty.

**Table 36: Summary of Overpayment**

Details	Amounts (Ksh.)
Gross Salary	8,548,950
Prorated (Expected)	3,162,183
<b>Overpayment</b>	<b>5,386,766</b>

**Un-supported imprest issued and irregularities in imprest management**

3.4.3.7 Travelling imprest was budgeted for under travelling and accommodation expenditure item. The actual expenditure for the years is as detailed below

**Table 37: Travelling and Accommodation Expenditure**

Financial Year	Actual expenditure(Kshs)
2014/2015	107,459,137
2015/2016	145,183,504
2016/2017	Not availed

3.4.3.8 The special audit reviewed travelling imprest totaling to Kshs.74,630,418. Out of this amount, Kshs.18,376,813 was supported while Kshs.50,646,536 was unsupported, as detailed in **Appendix 28**. Kshs.5,607,069 was still outstanding cumulatively as at the time of the audit as detailed in **Appendix 29**.

**Table 38: Unsupported Imprest Issued**

Year	Supported		Unsupported	
	Ksh	USD	Kshs.	USD
2014/2015	5,161,525	0	13,706,096	0
2015/2016	6,732,388	0	27,384,939	8,862
2016/2017	6,482,900	235,978	9,555,500	231,532
<b>Total</b>	<b>18,376,813</b>		<b>50,646,536</b>	<b>240,394</b>

3.4.3.9 The special audit established that imprest of Kshs.2,022,003, Kshs.3,223,866 and Kshs.361,200 for financial years 2014/2015, 2015/2016 and 2016/2017 respectively as detailed in the table below remained outstanding by end of each financial year.

This was contrary to section 92(5) of the PFM (National Government) Regulations of 2015 which requires, a holder of a temporary imprest to account or surrender the imprest within 7 working days after returning to duty station.

**Table 39: Outstanding Imprest**

Financial Year	Amounts (Kshs)
2014/2015	2,022,003
2015/2016	3,223,866
2016/2017	361,200.00
<b>TOTAL</b>	<b>5,607,069</b>

3.4.3.10 The special audit also noted that imprest documents for Kshs.5,654,715 (USD 30,834) for financial years 2014/2015, 2015/2016 and 2016/2017 as detailed below were provided but this were not recorded in the respective imprest registers.

**Table 40: Imprest not Recorded in Imprest Register**

Financial year	Kshs.	USD
2014/2015	2,540,345	16,691
2015/2016	2,244,070	4,008
2016/2017	870,300	10,135
<b>TOTAL</b>	<b>5,654,715</b>	<b>30,834</b>

3.4.3.11 Failure by the accounting officer to recover the outstanding imprest on the due date is contrary to section 92(5) (6) of the PFM (National Government) Regulations of 2015.

3.4.3.12 Officers detailed in **Appendix 30** were issued with more than one imprest for the same period totaling to Kshs.1,839,079 as summarized in the table below. The officers were issued with additional imprest before surrendering the previous ones which was contrary to section 8.3(h) of the NCA Finance Policies and Procedures Manual which requires that in order to effectively manage and control the issue of temporary imprest, it is necessary for the authorizing officer to ensure that no second imprest is issued to any officer before the first imprest is surrendered or

recovered in full from his salary. This should be done through a confirmation from the accountant in charge who endorses the imprest warrant form.

**Table 41: More than one Imprest Issued to Officers**

YEAR	AMOUNTS (KSH.)
2014/2015	214,200
2015/2016	1,584,879
2016/2017	40,000
<b>TOTAL</b>	<b>1,839,079</b>

**Cash management of Kshs.457,782,866**

3.4.3.13 During the period under review, a total of Kshs.457,782,866 was encashed from the the various NCA bank accounts as summarized in the table below . According to the Management of NCA, these encashments were for petty cash use and office operating expenses. The withdrawals were being done by two Finance Officers, Mary Kamau and Fred Miseda, who were appointed bank agents. These officers made numerous cash withdrawals from the bank accounts as follows:

**Table 42: Encashment**

Bank	Account number	Total encashment per bank account (Kshs.)	Total encashment (ksh)	Total amount recorded in cashbooks (kshs)	Pettycash & cash payment Cashbook	Encashment recorded in petty cashbook & cash payment cashbook (kshs)	Cash payment without payment voucher (kshs)	cash payment voucher provided (kshs)
KCB	1136368019	222,037,705	457,782,866	419,150,752	Petty cash 2014-2015	3,883,146	3,800,902	82,244
CBA	7012550017	173,592,485			Petty cash 2015-2016	4,147,971	3,977,487	170,484
CBA-USD	7012550022	62,152,676			Cash payment cashbook 2014-2015	123,365,057	118,657,093	4,707,963

					Cash payment cashbook 2015-2016	135,799,745	69,800,486	65,999,258
	TOTAL	457,782,866	457,782,866	419,150,752		267,195,920	196,235,969	70,959,950
					Unaccounted Encashments	190,586,946		

3.4.3.14 The NCA Finance Policies And Procedures Manual, 2014 ,section 9.5, requires NCA to maintain cashbooks for every banks accounts and petty cash. However, the special audit noted that NCA maintained three different cashbooks namely; Bank account cashbooks, petty cashbook and cash payment cashbook which was used to make payments above Kshs.10,000. The NCA Finance Policies And Procedures Manual, 2014 Policy Guidelines, section 9.3.2 on Petty cash, requires that any payment in excess of kshs10,000 will be made by cheque. However, NCA made numerous cash payments which was contravening the policy guidelines as detailed below:

**a) Kenya Commercial Bank (KCB) A/C No.1136368019 Kshs222,037,705**

3.4.3.15 Kshs 222,037,705 was encashed from the Kenya Commercial Bank as established from the availed KCB cheque register. Out of this amount ,Kshs 216,537,705 was recorded in the KCB cashbook while Kshs 5,500,000 was recorded in the cheque register but no corresponding entries in the KCB cashbook. This contravenes the NCA Finance Policies And Procedures Manual, 2014 section 9.5 (a) on cashbook management which states that, *“the cashbook is one of the major books of original entries since it captures all the payments and receipts of the Authority”* as detailed in **Appendix 31**

3.4.3.16 Out of the kshs 216,537,705 recorded in the cashbook, we noted that Kshs 107,191,205 was recorded in the 2014/2015 and 2015 2016 financial year’s cash payment cashbooks and Kshs 3,800,000 recorded in the 2014/2015 and 2015 /2016 financial year’s petty cashbook.

3.4.3.17 The special audit team could not confirm the balance of cheques totaling to Kshs.105,546,500 for the financial year, 2016/2017 and utilization of these amount since NCA did not provided petty cashbook and cash payment cashbook as detailed in **Appendix 32**

**b) Commercial Bank of Africa (CBA) A/C No.7012550017**

- 3.4.3.18 Kshs.173,592,485 was withdrawn from the Commercial Bank of Africa (CBA) account . Out of this amount, the team confirmed that Kshs.141,001,985 was recorded in the CBA cashbook while Kshs 32,590,485 had no corresponding entries in the CBA cashbook as detailed in **Appendix 33**. This contravened the NCA Finance Policies And Procedures Manual, 2014 section 9.5 (a) on cashbook management.
- 3.4.3.19 Out of the cheques totaling to Kshs.141,001,985 recorded in the CBA cashbook, Kshs.88,507,485 was confirmed as recorded in the cash payment cashbook while Kshs.1,000,000 was recorded in the petty cashbook for the financial year 2014/2015 and 2015/2016.
- 3.4.3.20 Cheques totaling to Kshs.51,494,500 for the financial year 2016/2017 could not be confirmed to the 2016/2017 cash payment cashbook and petty cashbook since these cashbooks were not availed to the audit team as detailed in **Appendix 34**.
- 3.4.3.21 Out of this amount, Kshs.17,590,500 was recorded in the CBA cash payment cashbook. This amount could not be accounted for since there was no corresponding double entries of the cheques in the CBA cashbook as summarized in the table below

**Table 43: Unaccounted for Cash withdrawals**

DATE	CHEQUE NO	PAYEE	PURPOSE	AMOUNT
15/4/15	000568	Fred Miseda	Allowance	1,131,000
15/4/15	000569	Fred Miseda	Petty Cash	1,486,500
05/12/2015	000599	Mary N. Kamau	Petty Cash	950,000
14/5/15	000625	Fred Miseda	Petty Cash	1,930,500
14/5/15	000626	Fred Miseda	Petty Cash	1,930,500
20/5/15	000629	Mary N. Kamau	Petty Cash	700,000
26/5/15	000648	Fred Miseda	Petty Cash	3,500,000
28/5/15	000649	Mary N. Kamau	Petty Cash	1,500,000
06/02/2015	000651	Mary N. Kamau	Petty Cash	1,500,000
06/03/2015	000679	Mary N.	Petty Cash	1,000,000

DATE	CHEQUE NO	PAYEE	PURPOSE	AMOUNT
		Kamau		
16/6/15	000679	Mary N. Kamau	Petty Cash	750,000
			<b>TOTAL</b>	<b>17,590,500</b>

**C) Commercial Bank of Africa (CBA) USD A/C 7012550022**

3.4.3.22 In financial year 2014/2015 and 2015/2016, Cheques totaling to Kshs.62,152,676 were encashed from the Commercial Bank of Africa (CBA) USD account. Out of these, cheques totaling to Kshs.61,611,062 were recorded in the cashbook while the balance of Kshs.541,614 for financial year 2016/2017 were not confirmed since the cashbooks was not availed to the audit team as detailed in **Appendix 35**.

**Payments from the encashment of Kshs.457,782,866**

3.4.3.23 Out of the cash withdrawal of Kshs.457,782,866, the special audit noted that Kshs.257,309,752 were recorded in the cash cashbooks and Kshs.4,800,000 was recorded in the petty cashbook for the period under review as detailed below. The balance of Kshs.195,673,099 could not be traced in the cashbook.

3.4.3.24 The special audit team noted that Kshs.195,673,099 was unaccounted for since these payments were not recorded as payment in the petty cash and cash payment cashbook.

**Table 44: Summary of Encashments**

Bank	Encashment (Amounts)	Confirmed 2014-2016 cash cashbooks	Confirmed 2014-2016 petty cashbook	No documents for 2016/2017	Not recorded in cashbooks
KCB	222,037,705	107,191,205	3,800,000	105,546,500	5,500,000
CBA	173,592,485	88,507,485	1,000,000	51,494,500	32,590,485
CBA(USD0	62,152,676	61,611,062	0	541,614	0
<b>TOTALS</b>	<b>457,782,866</b>	<b>257,309,752</b>	<b>4,800,000</b>	<b>157,582,614</b>	<b>38,090,485</b>

3.4.3.25 The NCA made numerous cash payments as shown in the table above. Out of this amount, Kshs.188,457,579 were payments above Kshs.10,000. The Finance and Procedure Manual, 2014 policy guidelines, section 9.3.2 on petty cash ,requires that any payment in excess of Kshs10,000 will be made by cheque. We noted that these cash payments were above the petty cash threshold. These payments were recorded in the cash payment cashbook and no payment vouchers were availed as detailed in **Appendix 36** while Kshs.7,778,390 were cash payments out of the cash maintained as petty cash, no payment voucher was availed to support these petty cash payments as detailed in **Appendix 37**.

**Rapid Response Initiative (RRI) and quality assurance of Kshs.64,630,600**

3.4.3.26 It was noted that NCA made payments of Kshs.64,630,600 to the RRI and quality assurance team. Kshs.10,642,600 was paid to RRI while Kshs.53,988,000 was paid to quality assurance team in the 2014/2015 to 2015/2016 financial years. These payments were made under the Executive Director’s name yet there was no budgetary allocation provided for the RRI program.

3.4.3.27 The RRI was a program by NCA to support the Authority to carry out compliance and reinforcement of construction sites around the country under the quality assurance team. According to the discussions with NCA management, the staff under this program were to be recruited for a period of three months. However, NCA has been recruiting these staff from 2015/2016 financial year to date. It was not clear the number of RRI staff employed by NCA and no policy on the engagement of the RRI staff was provided by NCA.

3.4.3.28 There were no payment vouchers supporting these payments of RRI which was contrary to the PFM regulations 2015 section 104. (1) Which requires that all receipts and payments vouchers of public moneys shall be properly supported by pre-numbered receipt and payment vouchers and shall be supported by the appropriate Authority and documentation.

**Procurement of Goods and Services -Kshs.286,877,521**

3.4.3.29 The special audit team reviewed the procurement process for the following services procured within the period under review:

**Table 45: procured Goods and Services**

	<b>PAYMENT DETAILS</b>	<b>AMOUNT (KSH)</b>
1	Payments to companies which were not listed in their pre-qualified list of suppliers	53,873,729
2	Proposed Interior Partitioning of NCA Offices at the KCB offices in upper Hill, Nairobi	232,199,192
3	Consultancy services by Jomo-Kenyatta University of Agriculture and Technology	804,600
<b>Total</b>		<b>286,877,521</b>

3.4.3.30 It was established that , in the financial years , 2014/2015 and 2015/2016 , the NCA contracted and made payments to non-prequalified suppliers amounting to Kshs.53,873,729 as detailed in **Appendix 38**. This is contrary to section 28(2) of the repealed Public Procurement and Disposal Act , 2005 and section 95 (3) of the Public Procurement and Asset Disposal Act, 2015 both of which requires procuring entities to invite bids to only prequalified persons.

**Interior partitioning of NCA Offices at the KCB offices in upper Hill, Nairobi  
Kshs.232,199,192**

3.4.3.31 On 28 April, 2015 the Human Resource Department sent requisition to the Procurement Department requesting for the procurement of contractor for partitioning of the new Offices in Upper Hill. The scope of work included building works, electrical works, mechanical works , installation of CCTV, PABX and ICT infrastructure at a cost of Kshs.200,000,000.

3.4.3.32 On 23 April 2015, the tender was advertised in the standard newspaper as detailed below:

**Table 46: Tenders Advertised in Standard Newspaper of 23-04-15**

	<b>TENDER NO.</b>	<b>DETAILS</b>
1	NCA/T/07/2014-2015	Proposed partitioning of NCA offices at the KCB building in Upper Hill
2	NCA/T/08/2014-	LOT I-supply and delivery installation, testing and

	TENDER NO.	DETAILS
	2015	commissioning of electrical works LOT II-supply and delivery installation, testing and commissioning of mechanical works
3	NCA/T/09/2014-2015	Supply, delivery, installation, testing and commissioning of ICT infrastructure-Data center ,security Solutions, IPT and structured cabling

3.4.3.33 The tender was awarded at a cost of Kshs.232,199,192 to the following contractors:

**Table 47: The Contractors Awarded Tender of Kshs.232,199,192**

	TENDER NO.	DETAILS	COMPANY	AMOUNT (KSHS)
i	NCA/CONT/50/2015-2016	Interior partitioning of NCA offices at the KCB building in Upper Hill, Nairobi	M/s Concordia General and Civil Engineering Co. LTD	157,495,554.80
ii	NCA/CONT/50/2015-2016	Partitioning of NCA offices at the KCB building in Upper Hill (Supply , Delivery Installation, Testing and Commissioning of Electrical works-LOT I	M/s Glammar Electrical & Mechanical Ltd	17,500,000.00
		Partitioning of NCA offices at the KCB Building in Upper Hill (Supply,Delivery Installation,	M/s Anthopi Mechanical Engineering Services Ltd	23,855,924.00

	TENDER NO.	DETAILS	COMPANY	AMOUNT (KSHS)
		Testing and Commissioning of Mechanical works-LOT II		
iii	NCA/T/01/2015/2016	Supply, Delivery, Installation, Testing and commissioning of ICT infrastructure-unified communication, security solution and structured cabling works at KCB building in Upper Hill Nairobi Lot 1-structured cabling, active equipment and security systems LOTII - IP telephony	M/s Xtranet Communications LTD	33,347,713.39
				<b>232,199,192.19</b>

i) Interior partitioning of NCA offices at the KCB building in upper hill, Nairobi (Building Works) Kshs.157,495,554.

3.4.3.34 On 18 May, 2015, Mrs. Dinah J. Kirwa on behalf of Executive Director appointed 7 members to the tender opening committee vide a letter referenced NCA/SC/GEN/VOL.2 (292) as summarized in the table below.

**Table 48: Members of Tender Opening Committee**

NAME	POSITION
Mr. Paul Gesora	Chairperson
Eng. Crispus Ndinyo	Member
Ms. Caroline Makau	Member
Mr. Abdi Mayo	Member
Mr. John Kipkorir	Secretary
Ms. Rosemary Amolo	Secretariat
Ms. Karen Maina	Secretariat

3.4.3.35 A total of 29 bids were submitted and opened on 18 May, 2015 .It was established that, except for Mr. Paul Gesora and Eng. Crispus Ndinyo, all other members signed the tender opening register. There was no explanation why the two members did not sign the register. The tender opening minutes were also not availed. According to the tender opening register, the following firms bid for the tender:

**Table 49: Bidding Firms as Per Tender Register**

S/NO	NAME OF BIDDER	BID PRICE (KSHS)
1	Njuca Consolidated Co. Ltd	150,563,250
2	Tradewise Construction Company	47,157,604
3	Design Corporate ltd	129,917,840
4	Eggen Joinex ltd	194,333,698
5	Seiwa furniture and interior	131,801,900
6	Galana Building Contractors ltd	138,434,817
7	Bomco Building contractors ltd	148,800,800
8	Pujab engineering works ltd	137,379,855
9	Parbat Siyani interior	146,103,934
10	Kenhorn Juba K Ltd	140,863,763
11	Emelcon Builders ltd	130,475,652
12	Tulsi Consruction ltd	132,433,437

S/NO	NAME OF BIDDER	BID PRICE (KSHS)
13	Samima Investments	147,255,446
14	Lunao Enterprises	145,011,136
15	Seboka General Construction	132,468,697
16	Sahihi Corporate ltd	145,045,240
17	Skillman Construction ltd	152,055,734
18	Buldel Enterprises ltd	146,946,526
19	Busylink Services ltd	138,908,144
20	Three N. International ltd	139,653,279
21	Eunitech Engineering ltd	127,144,420
22	Ebony Consolidated ltd	149,151,663
23	Mareka Enterprises ltd	141,473,327
24	Arcing Venture ltd	130,000,000
25	Dickways Construction	198,589,627
26	Yellow House ltd	153,000,000
27	Flooring and Interior ltd	143,886,451
28	Concordia General & Engineering	157,495,554
29	Houseman General Contractors ltd	139,894,098

3.4.3.36 On 21 May 2015, the following Officers were appointed to the tender processing committee by the Executive Director vide a letter referenced NCA/SC/GEN/VOL.2 (298) as summarized in the table below:

**Table 50: Members of the Tender Processing Committee**

NAME	TITLE	DESIGNATION
QS Susan Rutto	Manager, RC&T	Chairperson
Arch. Fred Miseda	Regional officer, Central	Member
Mr. Paul G. Kariuki	Manager HRD	Member
Eng. J. K Rugano	Chief Sup. Engineer	Member
Qs Nicholas M. Kiogora	QS Directorate of PW	Member
Mr. Isaac Kurui	Senior Accountant	Member
Mr. Mark Kihumba	ICT Officer	Member

NAME	TITLE	DESIGNATION
Mr. Kipkoech Kirui	SSCO	Secretary
Mr. Mills Sigei	C. Officer	Secretariat

3.4.3.37 According to the tender evaluation report dated 2 June 2015, the tender evaluation was conducted in three stages, Mandatory/ preliminary stage, technical evaluation and financial evaluation. The following firms passed the mandatory evaluation criteria and proceeded to the technical evaluation stage:

**Table 51: Firms that Proceeded to Technical Evaluation Stage**

	BIDDER	SCORE (%)
1	Njuca Consolidated Co. Ltd	84
2	Bomco Building contractors ltd	78
3	Lunao Enterprises	68
4	Eunitech Engineering ltd	63
5	Mareka Enterprises ltd	66
6	Concordia General & Engineering ltd	92

3.4.3.38 Three firms , Njuca Consolidates Co. Ltd, Bomco Building Contractors Ltd and Concordia General and Engineering ltd attained the minimum cut off technical score of seventy percent and progressed to the financial evaluation stage. Financial evaluation was conducted and both the technical and financial evaluation scores aggregated as detailed below:

**Table 52: Summary of Evaluation Report**

COMBINATION OF TECHNICAL AND FINANCIAL SCORES							
BIDDER		TECHNICAL		FINANCIAL		RANKING	TENDERED AMOUNT (KSHS)
		SCORE OF 80	OUT	SCORE OF 20	OUT		
Njuca Consolidated Co. Ltd		67.20		19.76		2	150,563,250
Bomco Building contractors ltd		62.40		20.00		3	148,800,800
Concordia General and Engineering		73.60		18.90		1	157,495,554

- 3.4.3.39 The evaluation committee, recommended, M/s Concordia General and Engineering Co. Ltd which scored the highest combined technical and financial score to be awarded the tender for interior partitioning of NCA offices at the KCB building in Upper Hill at a cost of Kshs.157,495,554.
- 3.4.3.40 The 26<sup>th</sup> Tender Committee Meeting held on 18 June, 2015 considered and awarded M/s Concordia General and Engineering Company Limited the contract at a total tender sum of Kshs.157,495,554 inclusive of all taxes.
- 3.4.3.41 All successful and unsuccessful bidders were notified by the Executive Director on 26 June, 2015 vide a letter referenced NCA/SC/GEN/Vol.3.
- 3.4.3.42 On 1 July 2015, M/s Concordia General and Engineering Company Limited accepted the tender award with all its conditions as specified in the offer letter referenced NCA/SC/GEN/Vol.3 (042). Further, on 13 July, 2015, the Executive Director granted M/s Concordia General and Engineering Company Limited possession of the site vide a letter referenced NCA/SC/GEN/VOL.3 (219). The work was to commence within 7 days and completed within 6 weeks as per the contract.
- 3.4.3.43 On the same day Arch. Winnie Kalya was appointed by the Executive Director as the Project Manager in charge vide a letter referenced NCA/SC/GEN/Vol.3 (218).
- 3.4.3.44 The contract between between NCA and M/s Concordia General and Engineering Company Limited was signed on 14 July, 2015 at a cost of Kshs.157, 495,554 inclusive of all taxes.

3.4.3.45 M/s Concordia General and Engineering Company Limited was the main contractor in this tender and executed the builder's works part of the contract. We noted that the builders work submitted by Concordia was estimated at Kshs.37,442,030 as summarized below

**Table 53: Cost of Builder's Works Submitted by Concordia**

SUMMARY OF BUILDERS WORK	AMOUNT (KSHS)
Bill No.3-builders works-9 <sup>th</sup> floor	11,496,200
Bill No.4-builders works-10 <sup>th</sup> floor	10,173,800
Bill No.5-builders works-11 <sup>th</sup> floor	15,772,030
	37,442,030

3.4.3.46 The balance of Kshs. 119,825,524 was factored as payments for the following services:

**Table 54: Cost of Other Works**

DESCRIPTION	AMOUNT (KSHS)
Particular preliminaries	12,230,000
General preliminaries	500,000
Prime cost and provisional sums	85,600,000.
Add 16% profits	21,495,524.
Total	119,825,524.

3.4.3.47 A Meeting held on 14 July, 2015 chaired by the Project Manager, Arch. Winnie Kalya , noted that there were variations between the Bill Of Quantities and the finals drawings due to last minute change of designs. The analysis and details of the variation were not availed for audit review. There was also no evidence that the variations were requested by the user department contrary to section 9 (d) of the repealed Public Procurement and Disposal Regulations,2006.

3.4.3.48 On 17 July 2015 in a Meeting chaired by, Winnie C.Kalya, the Project Manager noted that the contract sum for builders works was quoted at Kshs.101,889,630 up from the initial quoted amount of Kshs.37,442,030 quoted in the Bill of Quantities. There was no breakdown / analysis on how the variations were arrived at . The variations amounted to an increase of 63% of the initial amount quoted by the

contractor. This is contrary to the Legal Notice of 18 June 2013 of the repealed Public Procurement and Disposal Regulation, 2006 that prohibits variation of contracts for works beyond twenty-five per cent (25%) of the original contract value.

- 3.4.3.49 By the time of this audit, M/s Concordia General and Civil Engineering Company Limited had been paid a total of Kshs.81,711,179 based on certificates of completion as detailed below:

**Table 55: Payments to M/s Concordia Ltd**

DATE	DESCRIPTION	CHEQUE NO.	RETENTION (KSHS)	NET AMOUNT (KSHS)
24/09/2015	1 <sup>st</sup> payment on account of contract No.NCA/CONT/50/2015-2016	000742		54,810,763
	10% Retention		6,602,334	
Not dated	2 <sup>nd</sup> payment on account of contract No.NCA/CONT/50/2015-2016	00651		26,900,416
			6,602,334	81,711,179

ii) Evaluation of LOT II-Supply, Delivery, Installation, Testing and Commissioning of Mechanical Works- Kshs.23,855,924

- 3.4.3.50 The tenders for the supply , delivery, installation, testing and commissioning of Mechanical Works were advertised on 3 May, 2015 in the Standard newspaper. Bids were opened on 18 May 2015 as detailed below:

**Table 56: Tenders submitted and opened on 18-05-2015**

	BIDDER NAME	BIDDER PRICE (KSHS)
1	Concordia Building and Civil	25,551,100
2	Solakold Services Ltd	21,453,750
3	Buldel Enterprises Ltd	17,108,210

	BIDDER NAME	BIDDER PRICE (KSHS)
4	Raerex(E.A) Ltd	17,817,998
5	Axis Engineering Services Ltd	22,858,680
6	Clean Air Systems	20,631,783
7	Seven Fourteen Limited	11,509,200
8	Hall Equatorial Ltd	20,064,790
9	Specialised Water Systems	24,567,950
10	Anthopi Mechanical Engineering Services	23,855,924

- 3.4.3.51 The same tender evaluation committee that evaluated lot-I evaluated lot II. The bids were evaluated by the evaluation committee in three stages, Mandatory (preliminary), Technical and Financial Evaluations.
- 3.4.3.52 M/s Anthopi Mechanical Engineering Services qualified for further evaluation after compliance to the mandatory minimum requirements. All the other bidders were not responsive to the mandatory evaluation requirements hence they were disqualified from further evaluation.
- 3.4.3.53 The minimum qualifying score for technical evaluation was 70 points and above. From technical analysis, M/s Anthopi Mechanical Engineering Services, scored 87 points and thus qualified for financial evaluation
- 3.4.3.54 M/s Anthopi Mechanical Engineering Services were the only responsive bidders for the technical and financial evaluation, having scored the highest combined technical and financial scores. The evaluation committee in their report signed and dated 2 June 2015 recommended M/s Anthopi Mechanical Engineering Services Ltd, for award of the tender for the supply, delivery, installation, testing and commissioning of Mechanical Works being the lowest evaluated bidder at their tender sum of Kshs.23,855,924 .
- 3.4.3.55 The tender committee adopted the report of the evaluation committee and awarded the contract to M/s Anthopi Mechanical Engineering Services Ltd at a tender sum of Kshs. 23,855,924.
- 3.4.3.56 The award notification to M/s Anthopi Mechanical Engineering was sent on 26 June, 2015 vide letter ref no: NCA/SC/GEN/Vol. Notification to unsuccessful bidders were also sent on the same day. M/s Anthopi Mechanical Engineering Services accepted the award vide letter reference No. AMES/1505/DNM/mm dated 3 July, 2015.

- 3.4.3.57 The contract agreement was signed on 15 July, 2015 between NCA and M/s Anthopi Mechanical Engineering Services Ltd at a total cost of Kshs.23,855,924 inclusive of all taxes.
- 3.4.3.58 By the time of completion of the audit, M/s Anthopi Mechanical Engineering Services had been paid a total of Kshs.19,713,130 based on certificates of completion as shown below:

**Table 57: Payments made to Anthopi Mechanical Engineering Services**

Date	Description	Cheque no.	Retention (Kshs)	Amount (Kshs)
17-Aug-16	Payment for mechanical services		1,174,560.40	9,659,746
18-Sep-15	Being payment on account of contract No NCA/CONT/50/2015-2016 According to statement held in support thereof	1490	756,673.32	6,281,693
18-Sep-15	Being payment on account of contract No NCA/CONT/50/2015-2016 According to statement held in support thereof	1356	419,076.00	3,771,690
			2,350,309.72	19,713,130

- 3.4.3.59 According to the Project Engineers estimates presented in the Bills of Quantity, the Mechanical Work was estimated to cost of Kshs.10,000,000. However, the work costed additional amount of Kshs.13,855,924. There was no explanation and justification on why the actual costs significantly exceeded the Engineers Estimates. In addition, the Engineers Estimates of Kshs.10,000,000 had been used as a basis for budgeting. There was no evidence of an approval for the additional amounts of Kshs.13,855,924 contrary to section 3(a) of the repealed Public Procurement and Disposal Act, 2005 which requires that all procurements shall be within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through an annual procurement plan.

iii) LOT I -Supply ,delivery, Installation, Testing and Commissioning of Electrical Works Kshs17,500,000.00

3.4.3.60 The tender for the supply ,delivery, installation, testing and commissioning of Electrical works was advertised on 23 April, 2018 in the Standard Newspaper. A tender opening committee was appointed on 18 May, 2015 vide a letter referenced NCA/SC/GEN/VOL.2(292) as detailed below:

**Table 58: Members of the Tender Opening Committee**

No.	NAME	POSITION
1	Mr. Paul Gesora	Chairman
2	Ms. Caroline Makau	Member
3	Mr. Abdi Mayo	Member
4	Eng. Crispus Ndinyo	Member
5	Mr. John Kipkorir	Secretary
6	Ms. Rosemary Omollo	Secretariat
7	Ms. Karen Maina	Secretariat

3.4.3.61 A total of seventeen (17) tenders were submitted and opened on 18 May,2015 as detailed below:

**Table 59: Details of Tender Opening for Lot I**

	BIDDER NAME	BIDDER PRICE (KSHS)
1	Concordia Building and Civil	16,717,700
2	Muga Electrical Contractors	17,493,406
3	Micronet Power Systems	16,303,900
4	Ancon Electrical Services	14,444,000
5	Kimukom Electrical Services	14,823,400
6	Buldel Enterprises Ltd	6,900,400
7	Powerpoint Sys.(E.A) Ltd	10,127,150
8	Philafe Engineering Ltd	11,846,681

	BIDDER NAME	BIDDER PRICE (KSHS)
9	Glama Electrical and Mechanical	17,500,000
10	Odd-Mac Engineering Ltd	13,116,711
11	Contemporary Electrical Ltd	13,995,591
12	Hitecs Electrical Contractors	13,705,640
13	Jumba Engineering Services	15,928,700
14	Nginu Power Engineering EA Ltd	15,009,300
15	Reliable Electrical Engineers Ltd	13,681,499
16	Samima investment Ltd	15,956,000
17	Patronics Services Ltd	Not indicated

3.4.3.62 On 21 May, 2015, a tender evaluation committee was appointed vide an internal memo referenced NCA/SC/GEN/Vol.2(298) as detailed below:

**Table 60: Members of Tender Evaluation Committee**

No.	NAME	POSITION
1	Qs Susan Rutto	Chairperson
2	Arch. Fred Miseda	Member
3	Mr. Paul G. Kariuki	Member
4	Eng. J.K. Rugano	Member
5	Qs Nicholas M. Kiogora	Member
6	Mr. Isaac Kirui	Member
7	Mr. Mark Kihumba	Member
8	Mr. Kipkoech Kiruimr	Secretary
9	Mr. Mills Sigei	Secretariat

3.4.3.63 The tenderers were subjected to technical and financial evaluations. Only two (2) bidders attained the technical evaluation criteria of 70 points and above. M/s Micronet Power Systems and M/s Glammar Electrical & Mechanical Ltd scored 81 and 88 points respectively hence qualified for further financial evaluation.

3.4.3.64 At financial evaluation stage, M/s Micronet Power Systems had an arithmetic error of Kshs.500,000 to their disadvantage while M/s Glammar Electrical & Mechanical Ltd had no arithmetic error. On combination of both technical and financial

scores, M/s Micronet Power Systems scored 84.80 points and was ranked number 2 while M/s Glammar Electrical and Mechanical Ltd had 89.40 points and was ranked number 1.

- 3.4.3.65 The evaluation committee in their report dated and signed on 2 June, 2015 recommended M/s Glammar Electrical & Mechanical Ltd, having scored the highest combined technical and financial scores of 89.40%, to be considered for the award of the tender for supply ,delivery, installation, testing and commissioning of Electrical works at a tender sum of Kshs. 17,500,000.
- 3.4.3.66 The tender committee adopted the report of the evaluation committee on 26 June 2015 and awarded the tender for the supply ,delivery, installation, testing and commissioning of Electrical works to M/s Glammar Electrical and Mechanical Ltd at a ctender sum of Kshs. 17,500,000 inclusive of all taxes.
- 3.4.3.67 The award notification to M/s Glammar Electrical and Mechanical Ltd was done on 2nd July 2015 vide a letter reference number GLA/2/20015. Notification to other unsuccessful bidders was sent on the same day. M/s Glammar Electrical and Mechanical Ltd accepted the award letter vide a letter reference no GLA/2/20015 dated 2 July 2015.
- 3.4.3.68 The contract between NCA and M/s Glammar Electrical and Mechanical Ltd was signed on 14 July, 2015.
- 3.4.3.69 As at the time of completion of the audit, a total of Kshs.14,374,441 had been paid to M/s Glammar Electrical and Mechanical Ltd as detailed below

**Table 61: Payments to M/s Glammar Electrical & Mechanical Ltd**

Date	Description	Cheque no.	10% Retention	Net Amount
19/10/2015	Being first payment on account of contract No.NCA/CONT/51/2015 -2016 according with statement and measurement thereof	1364		4,167,125
			501,959.00	
14/01/2016	Being first payment on account of contract No.NCA/CONT/51/2015 -2016 according with statement and measurement thereof	1617		5,816,735

Date	Description	Cheque no.	10% Retention	Net Amount
24/6/2014	Being first payment on account of contract No.NCA/CONT/51/2015 -2016 according with statement and measurement thereof	1355		3,256,479
			392,265.50	
15/09/2015				
	Being first payment on account of contract No.NCA/CONT/51/2015 -2016 according with statement and measurement thereof			1,134,100
	<b>Total</b>			<b>14,374,441</b>

iv) Supply, Delivery, Installation, Testing and Commissioning of ICT infrastructure- unified communication, security solution and structured cabling LOT 1- structured cabling, active equipment and security systems LOT II - IP Telephony Kshs.33,347,713.

3.4.3.70 The tenders for supply, delivery, installation, testing and commissioning of ICT infrastructure that included unified communication, security solution and structured cabling works at KCB building in Upper Hill Nairobi were advertised in the Standard and Daily Nation of 24 July, 2015.

3.4.3.71 The bids were opened on 10 August, 2015 by the following tender opening committee members.

**Table 62: Members of the Opening Committee**

Name	POSITION
Mr. Paul Gesora	Chairperson
Ms. Yvonne Murega	Member
Mr. John Kipkorir	Member
Mr. Patrick Ong'uti	Secretariat
Ms. Rosemary Amolo	Secretariat

3.4.3.72 A total of twenty (29) bids were received for lot I while 18 bids were received for lot II . The tenders were evaluated by the following Officers that appointed by the Executive Director vide a letter referenced NCA/SC/GEN/VOL.3 (308) dated 11 August 2015 :

**Table 63: Evaluation Committee**

Name	POSITION
Mr. James Kilonzi	Chairperson
Mr. Mark Kihumba	Member
Mr. Isaac Kurui	Member
Mr. Yvonne Getugi	Member
Mr. John Kipkorir	Secretariat
Ms. Magdaline Makara	Secretariat
Ms. Effie Aluoch	Secretariat

3.4.3.73 According to the tender evaluation report signed and dated 17 August, 2015, 21 passed the preliminary evaluation criteria and qualified for technical evaluation. However, only 8 bidders, proceeded to the financial evaluation stage for both lots 1 and 2 . M/s Xtranet Communications ltd scored the highest combined technical and financial scores for both lots 1 and 2 as summarized below.

**Table 64: Technical and Financial Scores for Lot 1**

COMBINATION OF TECHNICAL AND FINANCIAL SCORES LOT 1			
Bidder	Technical Score out of 80	Financial Score out of 20	Ranking
Xtranet Communications LTD	63	20	1
Joworld Agencies Ltd	60.5	9.35	5
Securex Agencies Kenya ltd	61	14.06	3
Tech Source Point ltd	61	10.69	4
Novel Technologies	62.5	12.62	2

**Table 65: Technical and Financial Scores Lot 2**

COMBINATION OF TECHNICAL AND FINANCIAL SCORES LOT 2			
Bidder	Technical Score out of 80	Financial Score out of 20	Ranking
Xtranet Communications LTD	63	20	1

**COMBINATION OF TECHNICAL AND FINANCIAL SCORES LOT 2**

Securex Agencies Kenya ltd	61	11.81	3
Novel Technologies	62.5	17.20	2

- 3.4.3.74 The evaluation committee recommended the lowest evaluated bidder, M/s Xtranet Communications ltd, to be awarded the tender for the supply, delivery, installation, testing and commissioning of ICT infrastructure at a total contract price of Kshs.33,347,713 for both lots 1 and 2 being Kshs.21,237,286 for lot 1 and Kshs.12,110,426.96 for lot 2 respectively.
- 3.4.3.75 The tender committee meeting held on 19 August 2015, considered and adopted the report of the evaluation committee and awarded the tender for the supply, delivery, installation, testing and commissioning of ICT infrastructure to M/s Xtranet Communications Limited at a contract price of Kshs.33,347,713 inclusive of all applicable taxes.
- 3.4.3.76 On 24 August, 2015, the NCA notified M/s Xtranet Communications Limited vide a letter referenced NCA/SC/GEN/Vol.3 (319). Letters to unsuccessful bidders were sent on the same date. On 26 August, 2015, M/s Xtranet Communications Limited accepted the tender award with all its conditions as specified in the offer letter referenced NCA7/SC/GEN/VOL.3 (347). The contract agreement was signed on 3 September, 2015.
- 3.4.3.77 On 4 January, 2016 vide a letter referenced XTR/NCA/0204/1, M/s Xtranet Communications Limited forwarded the project completion report detailing the work done as per the terms of the contract and requested the Authority to avail the inspection certificate that will enable them to invoice for payment.
- 3.4.3.78 Further, a certificate of completion ,signed on 5 February, 2016 by Barbara Chebet, on behalf of M/s Xtranet Communications Limited was also issued to the NCA. It was noted that the NCA did not sign the completion certificate.
- 3.4.3.79 On 15 February, 2016, the following Officers were appointed to the Inspection and Acceptance Committee by the Executive Director vide a letter referenced NCA/SC/GEN/VOL.5 (31).

**Table 66: Inspection and Acceptance Committee**

	Name	POSITION
1	Mr. Stephen Obare	Chairperson
2	Ms. Winnie Kalya	Member
3	Mr. James Kilonzo	Member
4	Eng. Raymond Karani	Member
5	Mr. Kipkoech Kirui	Member

3.4.3.80 According to the Inspection and Acceptance report, the committee estimated the work to be 90% complete . On 22 February 2016, M/s Xtranet Communications Limited forwarded an invoice number 11340 of Kshs.19,113,557.79 for payment for lot 1 and another invoice number 11447 of Kshs.12,110,426.96 for lot 2 payment was forwarded on 22 March 2016. These invoices were inclusive of taxes.

3.4.3.81 By the time of this audit, M/s Xtranet Communications Limited had been paid a total of Kshs.28,460,588 as detailed below:

**Table 67: Payments to M/s Concordia Ltd**

Date	Description	Cheque no.	Retention amount	Cheque Amount (Kshs)
9/3/2016	No narration indicated on the payment voucher	740		14,962,641
	10% Retention		2,123,728	
2/11/2015	Being advance payment to the above for supply and delivery of installation of structured cabling in HQ offices	1410		3,162,283
	Being advance payment to the above for supply and delivery of installation of structured cabling in HQ offices		1,211,042	10,335,663
	<b>Total</b>		<b>3,334,771</b>	<b>28,460,588</b>

3.4.3.82 This contract ought to be a sub-contract to the main contract of Interior partitioning of NCA offices at the KCB building in Upper Hill, Nairobi. However,

there was no subcontracting agreement availed between the main contractor and M/s Xtranet Communications.

- 3.4.3.83 According to the Bills of Quantity presented by the Engineer, the ICT infrastructure was estimated to cost of Kshs.30,000,000. However, the works costed an additional amount of Kshs.3,347,713. M/s Xtranet Communications was paid a total of Kshs.28,460,589.35 which was net of 6% VAT of Kshs.1,552,353.56 and unpaid retention of Kshs.3,334,771.

**Consultancy Services by the Jomo Kenyatta University of Agriculture and Technology -Kshs.804, 600**

- 3.4.3.84 The NCA Human Resource Manager through an internal memorandum referenced NCA2/31/VOL.1/7, to the NCA Executive Director dated 13 August, 2015 requested for approval to engage the services of the Kenya National Examination Council (KNEC) to prepare, administer, invigilate and mark the psychometric test on behalf of the Authority, with a view of filling ninety-five (95) positions at job grade NCA C5 to NCA C8. The special audit team was not availed the response by the Executive Director to this request.
- 3.4.3.85 However, a review of a letter dated 18 November, 2015 referenced JKU/2/25/001 from the Chairman, Department of Architecture , Jomo Kenyatta University of Agriculture and Technology (JKUAT) to the NCA , established that the NCA engaged the JKUAT to prepare, administer, invigilate and mark the psychometric test that was conducted on 09 October,2015.
- 3.4.3.86 Section 68 (2e) of the Public Finance Management Act, 2012 requires the Accounting Officer to ensure that all applicable accounting and financial controls, systems, standards, laws and procedures are followed when procuring or disposing of goods and services. There was no explanation and documentation on how the NCA identified and engaged the JKUAT contrary to section 68 (2e) of the Public Finance Management Act, 2012.
- 3.4.3.87 On 04 November,2015, the Chairman, Department of Architecture of the JKUAT submitted an invoice referenced JKU/2/25/016 of Kshs.804, 600 to the NCA being amounts payable for conducting interviews by the JKUAT on behalf of the NCA. . The letter forwarding the invoice, signed by, the Chairman, Department of Architecture of the JKUAT , Arch. Kariuki Kamaru, stated that *“Following the telephone conversation requesting the Department of Architecture to provide*

resource persons to conduct the interviews for recruitment of your staff, we are pleased to inform you that the task was successfully concluded. This task was undertaken by Arch. Dr. Joseph Mukekeu and Arch. Brenda Maiba". It therefore implies that the Executive Director of NCA awarded the tender to prepare, administer, invigilate and mark the psychometric test to JKUAT over phone.

3.4.3.88 The breakdown for this invoice is as shown below:

**Table 68: Breakdown of Amounts in JKUAT Invoice**

DESCRIPTION	NO. PEOPLE	UNIT	RATE (KSHS.)	AMOUNT (KSHS.)
Production of test materials				
-advance consultation	2	4hours	3000/hour	24,000
-Binding & compilation	2	4 hours	3,000/hour	24,000
Invigilation of the exam	2	4.5 hours	3,000/hour	27,000
Marking of scripts	2	250 scripts @2000 per script	2000/script	500,000
Compilation of results		3 copies of final report		150,000
<b>Total Direct charges</b>				<b>725,000</b>
Compensation for reproduction of the examination papers(Department of Architecture, (J.K.U.A.T)	10% of 725,000			39,600
<b>Transport allowance</b>	2	5000/person	4 trips	40,000
<b>Grand Total</b>				<b>804,600</b>

3.4.3.89 In addition, there was no evidence of a formal contract between the JKUAT and the NCA and also JKUAT was not among the pre-qualified service providers.

**Management of Standing Imprest at the Regional and Liaison offices**

3.4.3.90 Section 93 of the Public Finance Management (National Government) Regulations, 2015 requires that, the holder of a standing imprest shall keep a memorandum cash book to record all receipts and payments and the balance on hand shall agree with the cash balance recorded in the cash book, and in the absence of any receipts, the actual cash balances plus the expenses paid shall equal at all times

the fixed level of the imprest for which the imprest holder is personally responsible.

- 3.4.3.91 In addition, section 94 of the Public Finance Management (National Government) Regulations, 2015 provides that an officer holding an imprest shall ensure that-
- (a) The imprest issued to him or her shall be used for the intended purpose only
  - (b) The imprest moneys and any payment vouchers awaiting replenishment are adequately safeguarded at all times
  - (c) Proper cash sale receipts are received for all payments out of the imprest
  - (d) The full amount of the imprest can be accounted for at all times in cash, stamps, money at bank and completed payment vouchers
  - (e) Goods purchased through imprest are taken on charge and certificate issued.

3.4.3.92 It was established that, the NCA Headquarters issued funds in form of imprest to the Regional Offices, which was to be used mainly for subsistence allowance and Office operations as detailed in **Appendix 39** and summarized below:

**Table 69: Disbursed Imprest to Regional Offices**

Regions	2014/15 (Kshs)	2015/16 (Kshs)	2016/17 (Kshs)	Totals (Kshs)
Kitui	328,200	2,426,369	4,095,322	6,849,891
Nyeri	462,000	2,779,527	2,235,693	5,477,220
Isiolo	375,000	1,710,770	2,049,856	4,135,626
Nakuru	354,900	3,280,451	-	3,635,351
Kisumu	299,700	2,981,804	2,335,041	5,616,545
Garissa	108,000	2,159,961	1,489,670	3,757,631
Eldoret	398,960	2,350,327	3,482,714	6,232,001
Kisii	245,100	2,910,133	1,363,750	4,518,983
Mombasa	339,000	3,118,031	3,053,494	6,510,525
Kakamega	291,600	2,678,080	1,434,080	4,403,760
Nairobi	-	2,677,805	3,006,256	5,684,061
Embu	-	-	1,912,850	1,912,850

Regions	2014/15 (Kshs)	2015/16 (Kshs)	2016/17 (Kshs)	Totals (Kshs)
Kajiado	-	-	920,687	920,687
Kiambu	-	-	390,860	390,860
<b>Totals</b>	<b>3,202,460</b>	<b>29,073,258</b>	<b>27,770,273</b>	<b>60,045,991</b>

3.4.3.93 The special audit visited the following Regional Offices and noted discrepancies between amounts disbursed at the NCA Head Quarters and amounts received at the Regional Offices as detailed below:

**Table 70: Summary of Unconfirmed Regional Imprest**

Regions	Amount disbursed at NCA HeadQuarter (Kshs)	Confirmed Received at Regions (Kshs)	Unconfirmed Received in Regions (Kshs)
Kitui	6,849,891	3,200,000	3,649,891
Nyeri	5,477,220	2,460,209	3,017,011
Nakuru	3,635,351	1,364,246	2,271,105
Kisumu	5,616,545	3,789,873	1,826,672
Eldoret	6,232,001	5,006,619	1,225,382
Kisii	4,518,983	591,492	3,927,491
Mombasa	6,510,525	4,758,943	1,751,582
Kakamega	4,403,760	2,097,099	2,306,661
<b>Totals</b>	<b>43,244,276</b>	<b>23,268,481</b>	<b>19,975,795</b>

#### Utilization of Petty Cash imprests at the Regional Offices

3.4.3.94 During the period under review, the NCA Head Quarters sent funds to the Regional Offices to be used as office imprest and subsistence allowance. Once these amounts had been utilized, the Regional Offices prepared surrender vouchers to support the expenditure. These vouchers are then sent to the NCA Head Quarters for reimbursement. However, it was noted that there was poor record keeping since the Regional Offices kept copies of the vouchers, having sent the originals to the NCA Head Quarters.

3.4.3.95 Further, the audit noted instances where reimbursement of the amounts surrendered took as long as 5 months thus making operations at the Regional Offices very slow.

3.4.3.96 The audit team was not availed with bank statements and withdrawal slips in all the Regions visited thus making it difficult to analyze the inflow and out flow of funds at the Regional Offices. In addition, the Regional Offices did not maintain cashbooks for imprest issued .

**(i) Central Rift, South Nyanza and Mt. Kenya Regional Offices**

3.4.3.97 The special audit established that an imprest totaling to Kshs.13,631,554 was recorded at the NCA Head Office as having been sent to the NCA Central Rift, South Nyanza and Mt. Kenya Regional Offices during the period under review. However, records at the Regional Offices indicated that only Kshs.4,415,947 had been received and recorded as detailed below. Therefore, the balance of Kshs.9,215,607 could not be accounted for. However, bank statements were not availed to confirm the transactions.

**Table 71: Imprest Sent and Received**

	CENTRAL RIFT (KSHS)	SOUTH NYANZA (KSHS)	MT.KENYA (KSHS)	TOTAL (KSHS)
Sent from HQ	3,635,351	4,518,983	5,477,220	13,631,554
Received	1,364,246	591,492	2,460,209	4,415,947
<b>Unconfirmed</b>	<b>2,271,105</b>	<b>3,927,491</b>	<b>3,017,011</b>	<b>9,215,607</b>

3.4.3.98 The contradicting information, on amounts of imprests issued and received between the NCA Head Quarters and the Regional Offices may compromise the integrity and reliability of financial reporting by the NCA.

3.4.3.99 A review of the imprest surrender vouchers availed for the South Nyanza Regional Office, established that the office procured ICT related items through imprest without professional opinion from procurement and ICT contrary to section 47 (1) of the Public Procurement and Asset Disposal Act, 2015 that requires that a procurement function shall be handled by procurement professionals whose qualifications are recognized in Kenya. Further, there was no evidence that the items were inspected to confirm compliance with specifications and contrary to section 48 of the of the Public Procurement and Asset Disposal Act, 2015 .

**Table 72: Irregularly procured items through imprests**

Date	Item	Receipt No.	Amounts (ksh)
13/4/2016	HP Tonner	5090	5800.00
13/4/2016	HP Tonners	5092	5650.00
2/5/2016	2No. HP Monitor, 2No. Keyboard, 2No. Dell Mouse	2327 and 2326	3000.00
8/3/2016	HP Tonner	5051	8500.00

3.4.3.100 The special audit reviewed accounting records for receipts issued and used in the Regional and Liason Offices and noted discrepancies between receipts issued by the NCA Headquarters and those received at the Regional Offices as summarized in table below and detailed in **Appendix 40**. This was a clear indication of weak internal controls in the handling of accountable documents.

**Table 73: Summary of Receipt Books Issued**

Station	No. issued to Regions	Confirmed in Regions	Not traced in Regions	Not traced to HQ issues
Nyeri	28	22	6	39
Kisii	10	0	10	10
Nakuru	46	18	28	40
Total	84	40	44	89

**(ii) Kakamega ,Eldoret and Kisumu Regional Office**

3.4.3.101 According to imprest records at the NCA Head Office, a total imprest of Kshs.16,252,306 was disbursed to Kakamega, Eldoret and Kisumu Regional Offices from the NCA headquarters during the period under review. However, a review of imprest records at the Regional Offices indicate that only confirmed Kshs.10,893,591 was received and Kshs.5,358,715 remained unaccounted for as detailed below:

**Table 74: Un-accounted for Imprest**

Details	Kakamega (Kshs)	Eldoret (Kshs)	Kisumu (Kshs)	Totals (Kshs)
From NCA HQ	4,403,760	6,232,001	5,616,545	16,252,306
Received	2,097,099	5,006,619	3,789,873	10,893,591
<b>Unconfirmed</b>	<b>2,306,661</b>	<b>1,225,382</b>	<b>1,826,672</b>	<b>5,358,715</b>

3.4.3.102 However, bank statements in regard to the transactions were not availed for audit review. The contradicting information, on amounts of imprests issued and received between the NCA Head Quarters and the Regional Offices may compromise the integrity and reliability of financial reporting by the NCA.

**Kakamega Imprest issued: Kshs 4,403,760**

3.4.3.103 The imprest issued to the Kakamega Office was utilized as detailed below. Part of the disbursed amounts of Kshs.295,600.00 was disbursed for payment of the Rapid Result Initiative (RRI) activities but only Kshs.34,000 was confirmed to have been sent to a personal account of an Officer based in Bungoma Liason Office by the name Rutto to pay for the RRI. The balance of Kshs.261,600 could not be accounted for .

**Table 75: Utilization of Imprest in Kakamega Regional office**

Description	Amount disbursed	Amount confirmed	Amount confirmed not
Office operation	4,108,160	2,063,099	2,045,061
RRI	295,600	34,000.00	261,600
<b>Total</b>	<b>4,403,760</b>	<b>2,097,099</b>	<b>2,306,661</b>

**Kisumu Imprest issued Kshs.5,616,545**

3.4.3.104 According to imprest records at the NCA Head Office, a total of Kshs.5,616,545 was disbursed to Kisumu Regional Office from the NCA headquarters for the period under review. However, records at the Kisumu Regional Office indicated that only Kshs.3,789,873 was received and the balance of Kshs.1,826,672 could not be

confirmed as having been received since bank statements were not availed. The funds were utilized as detailed below:

**Table 76: Imprest Utilization at Kisumu Regional office**

Description	Amount disbursed (Kshs)	Amount confirmed (Kshs)
Office operation	4,952,345.	3,125,673
RRI	664,200.	664,200
Total	5,616,545.	3,789,873

3.4.3.105 However, the special audit could not confirm the utilization of these funds since relevant supporting documents were not availed. The contradicting information, on amounts of imprests issued and received between the NCA Head Quarters and the Regional Offices may compromise the integrity and reliability of financial reporting by the NCA.

**North Rift Regional Office Imprest issued of Kshs 8,560,693**

3.4.3.106 It was established that , records at the NCA Head Office indicated that, a total of Kshs.8,560,693 was recorded as imprest sent to the North Rift Regional Office in Eldoret for the period under review. However, records at the Eldoret Regional Office indicated that Kshs.5,006,619 was the actual imprest received as detailed in Appendix 41.

3.4.3.107 The balance of Kshs.3,554,074 indicated at NCA Head Quarters as imprest sent to the North Rift Regional Office in Eldoret but not recorded in Eldoret Regional Office is summarized in the table below. However, bank statements were not availed to support this transactions.

**Table 77: Unsupported Imprest Used at Eldoret Office**

DATE	NUMBER	PARTICULARS	AMOUNT (KSHS)
<b>2014/2015</b>			
30/03/2015	TT	County Petty Cash	41,560
09/04/2015	TT	Petty cash for county office	29,800
		<b>TOTAL</b>	<b>71,360</b>

2016/2017			
18-11-16	ELD-002306	Office Facilitation Imprest	296,829
21-03-17	PV01075	Standing Imprest: Executive Director-Regional office	296,829
22-03-17	PV01084	Standing Imprest: Executive Director- (Regional off	274,529
22-03-17	PV01086	Standing Imprest: Executive Director (Regional office	271,444
22-03-17	PV01082	Standing Imprest: Executive Director (Regional office	298,870
22-03-17	PV01078	Standing Imprest: Executive Director- Regional office	299,103
23-03-17	PV01070	Standing Imprest: Executive Director-Regional office	300,000
08-05-17	PV01241	Standing Imprest: EXECUTIVE DIRECTOR (REGIONAL OFFI	279,068
		<b>TOTAL</b>	<b>3,482,714</b>
		<b>SUB TOTAL</b>	<b>3,554,074</b>

- 3.4.3.108 The special audit established that out of the imprest received of Kshs 5,006,619 in the North Rift Regional Office in Eldoret, the NCA availed records for Kshs.3,837,518 to the audit team as the total amount sent to the North Rift Regional Office in Eldoret for Rapid Result Initiative (RRI) allowances, office expenses and imprest for operations as detailed in **Appendix 42**.
- 3.4.3.109 The special audit noted that Kshs.1,169,101 was received and utilized in the Eldoret Regional Office, but the utilization was not disclosed at the NCA headquarters as detailed below.
- 3.4.3.110 The contradicting information, on utilization of imprests between the NCA Head Quarters and the Regional Offices may compromise the integrity and reliability of financial reporting by the NCA.

**Table 78: Undisclosed utilized in Eldoret Office but not disclosed at the NCA Head Quarter.**

Return month	Return Preparation date	Return Checked date	Amount Utilized at Eldoret regional office	Amount Utilized at Kitale liaison office	Total amount received and accounted for
<b>FY 2015/2016</b>					
June /July 2016	19-08-16	19-08-16	200,000	100,000	300,000
		<b>Total</b>	<b>200,000</b>	<b>100,000</b>	<b>300,000</b>
<b>FY 2016/2017</b>					
Aug-16	30-09-16	30-09-16	184,967	125,188	310,155
Jan-17	15-02-17	15-02-17	156,409	148,290	304,699
Feb-17	09-03-17	10-03-17	150,847	103,400	254,247
		<b>Total</b>	<b>492,223</b>	<b>376,878</b>	<b>869,101</b>
		<b>Sub-Total</b>	<b>692,223</b>	<b>476,878</b>	<b>1,169,101</b>

3.4.3.111 The special audit noted that, Out of the total imprest received of Kshs 5,006,619, the Eldoret Regional Office accounted for Kshs 3,865,225 while the Kitale Liaison Office accounted for Kshs 1,141,394 as summarized in the table below and detailed in Appendix 41

**Table 79: Imprest Received by the Eldoret and Kitale Offices**

FINANCIAL YEAR	AMOUNT UTILIZED AT ELDORET OFFICE (KSHS)	AMOUNT UTILIZED AT KITALE LIAISON OFFICE (KSHS)	TOTAL (KSHS)
2014/2015	327,500	0	327,500
2015/2016	2,349,745.00	292,713	2,642,458
2016/2017	1,187,980.00	848,681	2,036,661
<b>TOTAL</b>	<b>3,865,225</b>	<b>1,141,394</b>	<b>5,006,619</b>

(iii) Lower Eastern, Central Eastern and Coast Regions  
Unaccounted for Imprest Ksh. 4,416,021

- 3.4.3.112 It was established funds had been recorded at the NCA imprest records at the Head Office and Regional Offices as having been disbursed and received by the Lower Eastern (Kitui), Central Eastern (Embu) and Coast (Mombasa) Regions as summarized below and detailed in **Appendix 43**. However, bank statements were not availed to support the transactions. The contradicting information, on amounts of imprests issued and received between the NCA Head Quarters and the Regional Offices may compromise the integrity and reliability of financial reporting by the NCA.
- 3.4.3.113 A comparison between the amounts disbursed and the amounts accounted for by the respective Regional Offices established that Kshs. 4,416,021, could not be accounted for as detailed below since relevant support documents were not availed:

**Table 80: Comparison between Disbursed and Spent Imprest**

FY	KITUI REGIONAL OFFICE			EMBU			MOMBASA		
	AMOUNT SENT BY HQ	AMOUNT SURRENDERED	DIFFERENCE	AMOUNT SENT BY HQ	AMOUNT SURRENDERED	DIFFERENCE	AMOUNT SENT BY HQ	AMOUNT SURRENDERED	DIFFERENCE
2014-2015	328,200	0	328,200	0	0	0	339,000	532,355	(193,355)
2015-2016	2,426,369	800,000	1,626,369	NOT GIVEN	1,233,255	1,233,255.00	3,118,031	2,321,851	796,180
2016-2017	4,095,322	2,400,000	1,695,322	1,912,850	1,865,047	47,803	3,053,494	1,904,737	1,148,757
Total	6,849,891	3,200,000	3,649,891	1,912,850.00	3,098,302	-1185452	6,510,525.00	4,758,943	1,751,582
Total amount not accounted for								4,416,021	

### 3.5 Human Resources Management and Related Issues

#### 3.5.1 Total staff establishment and distribution the NCA Departments

##### **Irrregular appointment of the Corporation Secretary and Head of Legal Services**

- 3.5.1.1 According to the 27<sup>th</sup> Board meeting held on 26 May, 2015, the Executive Director sought guidance of the Board to amend the organogram to include the position of General Manager and Corporation Secretary which should be filled by the then Senior Legal Officer since he had the relevant qualifications necessary to perform the job
- 3.5.1.2 During a Special Board meeting held on 3 June, 2015, The Board amended the Authority's organogram to replace position of Manager Legal with that of Corporation Secretary and Head of Legal Services. The Board also resolved to fill this position internally and that, Mr. Samson Ouma Lukoba be promoted and appointed as the Corporation Secretary and Head of Legal Services. The reasons given was that the Authority had sufficient capacity to fill position internally and there would be savings of advertisement and related costs. This resolution was communicated to the General Manager, Human Resource and Administration through unreferenced internal memo dated 5 June, 2015.
- 3.5.1.3 According to the as appointment letter dated 7 October, 2015 referenced NCA 0022/83, Mr. Samson Ouma Lukoba, was formally appointed, the NCA Corporation Secretary and Head of Legal Services effective 01 July, 2015.
- 3.5.1.4 The special audit noted that this was against section 1.4 (IV) of the NCA Recruitment Policy referenced NCA/HRA/PCY/01 ,that requires that applicants shall be recruited on merit, based on their academic and professional qualifications, experience, skills and competencies. It also provides that, selection of candidates will be on merit and must meet the minimum set pass mark. Section 1.4 (XI) further requires selection exercise to be undertaken in a transparent manner by a Committee composed of persons with appropriate expertise.
- 3.5.1.5 The special audit also noted that this was against section 1.20(1) (a) of the Mwongozo guidelines jointly issued by Public Service Commission and State Corporations Advisory Committee in January, 2015. These guidelines require Boards of State Corporations to be assisted by a qualified, competent and experienced Corporation Secretary who shall be competitively recruited.

### Internal Recruitment

- 3.5.1.6 The NCA Human Resource Policy of 2014 recognizes various ways of filling vacant positions in the Authority. Under section 1.6(a), internal sourcing is one way and is applicable under the following circumstances
- i. Internal sourcing shall be used to assess suitable employees for promotion or appointment to fill an approved vacancy.
  - ii. Internal sourcing shall take into consideration the internal talent pool based on merit and in line with the succession plan.
- 3.5.1.7 Section 1.10(ii) of the NCA Human Resource Policy of 2014, requires that, whenever a position falls vacant or a new position is established by the Board at the level of NCA 3 and below, the head of Human Resource and Administration in consultation with the concerned Head of the Department, shall seek the approval of the Executive Director to advertise the position(s).
- 3.5.1.8 The special audit noted that, there was no evidence of consultation between various Heads of Sections within the Authority before seeking approval to advertise various vacant positions. According to an Internal memorandum dated 10 July, 2015 from the Manager, Human Resource and Development to the Executive Director, requesting for an approval to fill vacant positions in the NCA establishment, the NCA Board had approved a staff establishment of 304 Officers as detailed in **Appendix 44**. The memo further stated that the existing staff composition was as detailed below.

**Table 81: NCA Staff Composition**

STAFF	NUMBER
Current staff compliment	86
Graduate Trainees	30
Casual staff	79
<b>Total</b>	<b>195</b>

- 3.5.1.9 The Human Resource Manager, through the internal memorandum, had requested for approval to advertise externally, 71 positions falling within job grades C2a, C2b C3, and C4 be and 141 positions falling within job Grade C5 and below to be advertised internally, to tap those under training and those serving on temporary

terms and who may be having the requisite qualifications. On 14 July, 2015, the Executive Director approved the following 95 positions for internal advertisement:

**Table 82: Internally Advertised Positions**

CADRE	GRADE	NO OF POSITIONS
Finance officer II	C5	1
Accountant II	C5	5
Registration officer II	C5	8
Inspection Officer II	C5	9
Training Capacity Building officer II	C5	2
Research Officer II	C5	8
Customer care II	C5	2
Records Management officer II	C5	8
Human Resource officer II(payroll)	C5	1
Human Resource officer II(Training)	C5	1
Corporate Strategy officer II	C5	2
Legal officer II	C5	2
Registration officer III	C6	9
Inspection officer III	C6	9
Finance officer III	C6	1
Accountant III	C6	5
Clerical Officers	C7	13
Office Support assistants III	C8	9
<b>TOTAL</b>		<b>95</b>

- 3.5.1.10 The internal memorandum by the Human Resource and Development Manager dated 10 July, 2015 to the Executive Director, on filling of vacant positions in the NCA establishment, indicates that the casuals who were working with the NCA were 79, graduate trainees were 30 and a staff compliment of 86.
- 3.5.1.11 The special audit established that the 95 positions were advertised internally exceeding the available number of casuals of 79 who had been engaged in the organization during this period. This was contrary to the NCA Human Resource Policy of 2014 section 2.7.1 (i) on internal sourcing, which requires that where a position falls vacant in grades C4 to C9, it will first be advertised internally. Where there are no suitable candidates to fill the vacancy, the position will be advertised externally. This implies that an external advertisement ought to have been placed to recruit the additional 16 staff.

3.5.1.12 According to the unreferenced report on shortlisting of candidates dated 18 August, 2015, the total applications received, both internally and externally were 628 of which 94 were rejected for failure to comply with application requirements while 534 applications were processed as detailed in **Appendix 45**. The special audit noted that, the applications processed, were received from 254 applicants with some of the applicants submitting more than one application. Among those shortlisted were 225 applicants who had indicated that they were working with NCA while outsiders shortlisted were 29 .

3.5.1.13 However, according to the internal memo by the Human Resource Manager to the Executive Director, dated 10 July, 2015, the casuals who were working with the NCA by then, were 79 and yet 225 applicants had been shortlisted on the basis of working with the NCA. It therefore implies that, the 146 staff were external applicants, who had irregularly applied for the internally advertised jobs and shortlisted contrary to section 2.7.2 of the Human Resource Policies and Procedures Manual of 2014 on external recruitment of staff.

3.5.1.14 The special audit analyzed the recruitment process, for internally advertised positions and noted anomalies detailed in the table below:

**Table 83: Review of recruitment process**

POSITION ADVERTISED	NUMBER REQUIRED	NUMBER SHORTLISTED	NUMBER INTERVIEWED	IRREGULARITY
Finance Officer II( Grade , C5)	1	12	3	<ul style="list-style-type: none"> <li>• 2 out of the 3 interviewed candidates were had not been shortlisted. This were , Patrick Onsongo and Susan Ndumia</li> <li>• Patrick Onsongo did not have required qualifications of CPA(K)</li> </ul>
Accountant II ( Grade C5)	5	12	7	<ul style="list-style-type: none"> <li>• 3 candidates in the interview score sheet had not been shortlisted</li> <li>• Rodgers Kimutai</li> </ul>

POSITION ADVERTISED	NUMBER REQUIRED	NUMBER SHORTLISTED	NUMBER INTERVIEWED	IRREGULARITY
				who was ranked number 1 was not in the score sheet for the interviews.
Registration officer II( Grade C5)	8	68	16	<ul style="list-style-type: none"> <li>• Michael Maina Kamanda , not inshortlist not applied for the position, but interviewed and appointed</li> <li>• Michael Sigei ranked number 11 was appointed but Joel O.Manyara who was number was 10 left out without justification.</li> <li>• Nakoli O. Maloba, ,Lucy C. Jechieng and Alex Hunda all ranked top ten but all left out</li> </ul>
Inspection Officer II(Grade C5)	9	43	16	<ul style="list-style-type: none"> <li>• Wycliffe Tirimba was appointed yet he had not been shortlisted and had no Higher Diploma which was the minimum requirement.</li> </ul>
Training &Capacity Building officer II(Grade C5)	2	19	4	<ul style="list-style-type: none"> <li>• Kevin Okemwa shortlisted and had no relevant qualifications (Actuarial Science)</li> </ul>
Research Officer II(Grade C5)	8	49	12	<ul style="list-style-type: none"> <li>• Kevin Okemwa had not been shortlisted but interviewed ranked second and appointed</li> </ul>
Customer Care II(Grade C5)	2	13	5	<ul style="list-style-type: none"> <li>• Marion Nasoita Kiranka</li> </ul>

POSITION ADVERTISED	NUMBER REQUIRED	NUMBER SHORTLISTED	NUMBER INTERVIEWED	IRREGULARITY
				<p>interviewed but had no minimum requirements nor in shortlisted.</p> <ul style="list-style-type: none"> <li>Lily Ngogoyo was ranked number 2 but not appointed instead candidate number 3, Sharlet Onyango Akinyi was appointed</li> </ul>
Records Management Officer II(Grade C5)	8	14	1	<ul style="list-style-type: none"> <li>Only Joseph Akaa Amruon was interviewed despite more applicants being in the shortlisted</li> </ul>
Human Resource Officer III-Payroll (Grade C5)	1	7	1	<ul style="list-style-type: none"> <li>Jackline Diwan Rayjeh shortlisted without minimum qualifications</li> </ul>
Human Resource OfficerII-Training and Development(Grade C5)	1	10	1	<ul style="list-style-type: none"> <li>Jacklyne Aketch otieno scored 76.8% but there was no vacancy,even though it was advertised</li> </ul>
Legal Officer II(Grade C5)	2	1	1	<ul style="list-style-type: none"> <li>Only Molly A. Rabongo was shortlisted, interviewed and appointed,but had not been admitted to the Bar which was requirement and therefore not qualified</li> </ul>
Registration Officer III(Grade C6)	9	79	12	<ul style="list-style-type: none"> <li>Mathew K. Kibet had a degree in Actuarial Science and Vincent Obegi Omoke had a degree in Business Management .This</li> </ul>

POSITION ADVERTISED	NUMBER REQUIRED	NUMBER SHORTLISTED	NUMBER INTERVIEWED	IRREGULARITY
				position required atleast a Diploma in Engineering
Inspection Officer III(Grade C6)	9	76	12	<ul style="list-style-type: none"> <li>Abraham Metto and Anthony N. Kisoge disqualified yet they had degrees in Quantity Surveying.</li> </ul>
Finance Officer III (Grade C5)	1	8	2	<ul style="list-style-type: none"> <li>None of the shortlisted candidates had the qualifications required</li> </ul>
Accountant III(Grade C6)	5	18	4	<ul style="list-style-type: none"> <li>3 out of the 4 candidates disqualified on the basis of lacking a diploma which was not a requirement. Mandatory qualification was CPAII which all this candidates had .</li> </ul>
Clerical Officer	13	44	42	<ul style="list-style-type: none"> <li>Mohamed Abdi had D plain which was below the grade C required in advertisement</li> </ul>
Office Support Assistant III	9	23	22	<ul style="list-style-type: none"> <li>Jemimah Omwono, Evelyn Otieno and Janet Kemunto Omwoyo not shortlisted but interviewed and appointed.</li> </ul>

### Recruitment of Staff on 2 Years Contract

3.5.1.15 The special audit established that the NCA did not have a policy on the engagement of casuals. During the request for recruitment of additional staff, the Authority had indicated that they had only 79 casuals. After recruitment, it's not clear how the 44 of the 79 recruited casuals were appointed on a two (2) years

contract without suitability interviews as instructed by the Board during the 31st Full Board held on 26 January, 2016.

- 3.5.1.16 Out of the 44 staff on contract, 41 of them were later confirmed into permanent and pensionable terms without the approval of the Board and the National Treasury and the appointment backdated to 1 April 2016 when they were engaged on contract as detailed in **Appendix 46**. This was contrary to section 2.5(a) of the NCA Human Resource Procedures Manual of 2015 which requires all appointments are to be made with the approval of the Board or as delegated.
- 3.5.1.17 The Human Resource Management Advisory Committee held a meeting on 6 November, 2017 and recommended that 16 staff on contract be confirmed into permanent and pensionable terms which the Executive Director approved. On 4 January, 2018, again the Human Resource Management Advisory Committee recommended conversion of the remaining 25 non-technical staff on contract to permanent and pensionable terms. The Executive Director approved the proposal on 8 January, 2018.
- 3.5.1.18 During the 31<sup>st</sup> Board meeting held on 26 June, 2016, the Human Resource Committee of the Board, presented on behalf of the management, a request to the Board to approve appointment of the 44 casuals on a two (2) year contract. The Board approved the appointment of the 44 staff then working as casuals in various Departments and stations within the Authority on a two (2) year contract. However, this was subject to suitability interviews being conducted. However, there was no evidence that suitability test was conducted on the 44 staff before being appointed on a two (2) years contract as directed by the Board.
- 3.5.1.19 This Board resolution was communicated to Human Resource and Administration Department through unreferenced internal memorandum dated 27 January, 2016.

#### **Recruitment of Graduate Trainees**

- 3.5.1.20 The special audit noted that there was no involvement of the learning institutions during the recruitment of the Graduate Trainees. This was against, section 1.20 of the NCA Human Resource and Procedures Policy of 2014. This policy requires that, *“In maintaining a talent pool of critical skills necessary for the future, the Authority will establish a program that identifies and engages students in learning institutions who are completing their courses and interested in pursuing careers in the areas of the Authority’s interest. The Authority, will carry out a competitive*

*process to identify students who have completed their undergraduate courses and place them in the graduate trainee programme. The number of graduate trainees, the terms, frequency and length of the training programme will be on the recommendation by the Management and approval by the Board”.*

- 3.5.1.21 However, there was no evidence that the NCA, involved respective Universities where the graduate trainees were trained so as to confirm their technical skills, talents and competency . **Appendix 47** details the graduate trainees recruited.
- 3.5.1.22 The special audit noted that, during the Human Resource Committee meeting of the Board held on 27 January 2014 , the NCA Management requested the Board to increase the number of graduate trainees from 16 to 30 and a further 10 be included from among those working with the Authority then and had undertaken and passed the aptitude test. This brought a total graduate trainee establishment to 40 from various disciplines, including Engineering/Technical fields and social sciences relevant to Authority’s business.
- 3.5.1.23 This was presented to the full Board meeting of 4 April, 2014, by the Chairman of the Human Resource Committee in pursuant to a meeting of the Committee held on 27 January, 2014. However, this was not deliberated and no resolution was made by the Board.
- 3.5.1.24 The special audit noted that the positions of Graduate Trainees were not provided for in the NCA approved staff establishment. This was also raised during the Board meeting held on 25 September, 2015 under Minute 9/29/FBM/25/09/2015 which recommended that in future a policy on management of the Graduate Trainees programme will be necessary to provide guidance on the process.
- 3.5.1.25 Again during the 30<sup>th</sup> Board meeting held on 4 December, 2015 under minute 8/30/FBM/04/12/2015, It was reported that the Graduate Trainees were among the group of thirty (30) that were subjected to an aptitude test out of which 22 scored 50% and above. The Board resolved that the 22 Graduate Trainees should not be subjected to a further evaluation but absorbed upon completion of their training. The remaining 8 graduate trainees were to be subjected to a further training and tests after 6 months. This decision was communicated through unreferenced internal memorandum from Executive Director to the Human Resource and Administration Manager dated 9 December, 2015.
- 3.5.1.26 This decision was communicated to the Graduate Trainees through an internal memo referenced NCA2/ED/GEN.VOL.I, dated 15 December, 2015 from the

Executive Director informing them of the Board resolution of the 30<sup>th</sup> Board meeting held on 4 December, 2015.

3.5.1.27 The special audit established that, while the advertisement indicated that the Authority was to recruit 26 Graduate Trainees, this number was increased to 30 with the inclusion of the 14 already working internally.

3.5.1.28 A review of the NCA payroll, established that, a total of 30 graduate trainees were engaged. The following four (4) were added midway after the 26 had already reported and no explanation was provided as to how they were identified. The additional four (4) added by the management was done without the Board approval.

**Table 84: Irregularly engaged Graduate Trainees**

Personal Number	Name
NCA0074	Mumbi Faith Mbithi
NCA0111	Lemiso Julius Lasoi
NCA0112	Nyatigo Titus Charana
NCA0113	Legishion Jackline

#### **Recruitment of Drivers**

##### **i. Recruitment of Additional Drivers**

3.5.1.29 The special audit noted that, the Authority recruited 13 more drivers than what was approved by the Board. A total of 18 drivers were recruited while the Board had approved recruitment of 5 drivers. A total of 47 applications were picked from the database of applicants of July/August 2013, out of which 27 candidates were shortlisted. It was further noted that, a total of 23 applicants attended the interviews which were conducted at the Kenya Institute of Highways and Building Technology between 1<sup>st</sup> and 3<sup>rd</sup> October 2014.

3.5.1.30 Out of the 23 applicants who were interviewed, the following 17 candidates were recommended for appointment as Drivers. This included 3 serving drivers who were recommended to be confirmed in their positions.

**Table 85: Successful candidates for the position of Drivers**

No.s	Names	Score (%)
1	Josphat Nyamwaya Adeny	88
2	Emmanuel Maddy Polokou	83
3	Linus Kiprotich Kosgei	83
4	Anthony Nanjira Wakhoko	82
5	Samwel Masawi Okwale	82
6	Rodgers Lel Kipchumba	82
7	Martha Mulewa	81
8	Lawrence Gatubu Chege	81
9	Stephen Musembi Mativo	80
10	John Mrema Kililo	80
11	Titus Kipchirchir Taboi	79
12	Jane Kaari	76
13	Kevin Onyango Okeeno	75
14	Peter Kangogo Rotich	74
	<b>Serving Drivers</b>	
15	Paul G. Waithaka	80
16	Douglas Nyambane Orina	74
17	Simon Kihia Kahiga	72

3.5.1.31 The special audit established that, the recruitment process for the Drivers contravened section 1.10 (iii) and (iv) of the NCA Human Resource Policy of 2014 that required the respective Heads of Department(s) to be part of the shortlisting panel for all positions in NCA 3 and below. It further provides that, the Executive Director, shall constitute an interviewing panel to be composed of not less than three (3) members to interview the shortlisted candidates. The panel shall include at least one representative from the requisitioning Department, one from Human Resource and Administration Division and the other to be nominated by the Executive Director. There was no evidence that either of this requirement was complied with in recruitment process for the above drivers.

3.5.1.32 The special audit also established that one Driver by the name, Kioko Rose Nzisa was also hired on 18 March, 2015 when the above group of drivers was reporting and yet she was not among those interviewed, and appointed.

**ii. Recruitment of Isiolo Driver**

3.5.1.33 It was established that, based on a request to recruit a driver for Isiolo Office, three (3) candidates were identified from a pool of applicants in the Authority's database and invited for assessment of suitability for employment as a Driver in Isiolo. The interview was held on 03 February, 2015 and was conducted by Esther Onyambu of NCA and Alexander Mativo, the Chief Instructor and Head of Driving School. The interview results were as detailed below:

**Table 86: Recruitment of Driver in Isiolo**

Name	Region	Marks (%)
Nephat Murithi Njeru	Embu	79
Abdijabar Osman	Isiolo	75
Bonventure Maingi Mulilya	Nairobi	75

3.5.1.34 The interview report recommended, Nephat Murithi Njeru to be appointed a Driver and deployed in Isiolo Regional office. The interviews were conducted by two Officers contrary to section 1.10(v) of the NCA Human Resource Policy of 2014 on recruitment which requires, the Executive Director to constitute an interviewing panel to be composed of not less than three (3) members to interview the shortlisted candidates.

**Recruitment of additional Investigation Officers.**

3.5.1.35 On 28 January, 2014 the Board approved recruitment of six (6) additional Investigation Officers. This was based on a request made by the NCA Management to the Board. On 27 November, 2014, the NCA General Manager, Human Resource and Administration vide unreferenced internal memo titled recruitment of additional Investigation Officers recommended to the Executive Director that four of the Officers be picked from the reserve list and the additional two be selected from the interviewed pool.

3.5.1.36 There was no clear criteria on how those picked from the interviewed pool were identified contrary to section 1.4(x) and (xi) of the NCA Human Resource Policy of 2014 that requires the principle of meritocracy to be applied in the selection

process for entry and upward mobility of employees and that the selection exercise shall be undertaken in a transparent manner by a committee composed of persons with appropriate expertise.

3.5.1.37 The table below details the Investigation Officers recruited:

**Table 87: List of Investigation Officers recruited**

	<b>Reserve list</b>	<b>Date of hired</b>
1	Eric Edwin Miseda	2 January, 2015
2	Julius Muchiri	2 January, 2015
3	Bernard N.O.Were	2 January, 2015
4	Steven Munyao Mwilu	2 January, 2015
	<b>From interviewed pool</b>	
5	James Krop Chepolet	2 January 2015
6	Nancy Chepkorir Milgo	2 January 2015

3.5.1.38 The Executive Director approved this list by marking on it OK but it was not dated.

**Irregular Staff recruitment contrary to the National Treasury Circular No. 02/2016**

3.5.1.39 The National Treasury circular No. 02/2016, required all State Corporations and Semi-Autonomous Government Agencies to seek approvals of the National Treasury before proceeding with recruitment of staff, upgrading and salary adjustments.

3.5.1.40 The Executive Director through a letter Ref. No. NCA2/31/VOLII (20) dated 18 May, 2017, requested the Principal Secretary, State Department of Public Works, in the Ministry of Transport, Infrastructure, Housing and Urban Development ,for approval to recruit 67 suitably qualified and highly motivated professionals majorly in technical positions to manage the Regional and Liaison offices. All positions were to be filled on contract terms of 3 years as detailed in **Appendix 48**.

3.5.1.41 The Principal Secretary, State Department of Public Works, on behalf of the National Construction Authority, wrote to the National Treasury through a letter Ref. No. MTIHU/D/NCA2/31/VOLII (21) dated 29 May, 2017.

3.5.1.42 The National Treasury gave an Authority of recruitment of 67 professionals through a letter Ref . No. RES1094/16/01/ (40) dated 12 June, 2017 addressed to the Principal Secretary, State Department of Housing and Urban Development. The letter indicated that “the Authority to recruit the staff applies only to the

positions that you have requested”. “You are advised to ensure that the recruitment process complies with the relevant laws”.

3.5.1.43 The NCA Executive Director was informed of this approval vide a letter Ref. No. BI/ADM/17/(85) dated 23 June, 2017, from the Principal Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development. The Authority was to recruit only the positions requested for as detailed below:

**Table 88: Approved cadres for recruitment**

	<b>CADRES</b>	<b>No. Approved</b>
1	General Manager, Registration and Compliance, General Manager, Finance, Human Resource and Administration	2
2	Senior Registration Officer	4
3	Senior Investigation officers	3
4	Senior Training and Capacity Building officers	4
5	Senior Research and Business Development officers	1
6	Inspection officer II	30
7	Training and Capacity Building officer II	8
8	Registration officer II	6
9	Human Resource officer I	1
10	Finance Officer II	3
11	Customer Care Assistants	2
12	Personal Secretaries / Administrative officers	2
	<b>Total</b>	<b>67</b>

3.5.1.44 The special audit noted that, the following Cadre of Officers were recruited yet they were not among the cadres approved by the Principal Secretary to the National Treasury through a letter Ref . No. RES1094/16/01/ (40) dated 12 June, 2017.

**Table 89: Cadre of staff recruited but not approved**

	<b>POSITION</b>	<b>No EMPLOYED</b>	<b>APPROVED</b>
1	Human Resource Officer II	1	0
2	Office Assistants	1	0
3	Librarian	1	0
4	Customer Care Assistant	6	2
5	Compliance Assistant	6	0
6	Driver	1	0
7	Corporate Strategy Officer	1	0
8	Records Management Officer	2	0
9	Assistant Manager , Compliance	4	0
10	Assistant Manager, Research and Capacity Building	1	0

**Recruitment into positions without required Qualifications.**

3.5.1.45 The special audit established that Officers detailed in **Appendix 49** were recruited into positions which they did not have the minimum qualifications as indicated in the NCA Career Progression Guidelines.

**3.5.2 Misappropriation of funds by Fred Miseda-Kshs.23,146,076**

**Revenue Fraud in the Finance and Accounting Department of the NCA**

3.5.2.1 The Office of the Auditor -General, received unreferenced letter, dated 11 December, 2017 from one of the NCA Board Members, alleging that, Fred Miseda, a Senior Finance Officer at the NCA , had stolen over Kshs.23,000,000 from the NCA and was being protected by the Senior Management and possibly by some of the Board Members.

3.5.2.2 The letter therefore requested the Auditor-General, to conduct an audit on the NCA Revenue, Receivable and Expenditure Management for the period 2014/2015 to 2016/2017.

3.5.2.3 The 11<sup>th</sup> Board Audit, Risk and Governance Committee (BARGC) sanctioned special audit on the levy collection process in the Finance and Accounting Departments to be conducted by the Internal Audit Department. This report was presented during the 12<sup>th</sup> Board Audit, Risk and Governance Committee meeting held on 5 September, 2016.

3.5.2.4 The special audit findings were as follows:

- That Kshs.29 million for the official receipts issued and acknowledged over a period of July 2015 to April 2016 could not be accounted for.
- The book copies of fraudulent receipts issued, bore the signature of one, Fred Miseda , a Senior Finance Officer
- There were deliberate efforts by the staff to defraud the Authority by assisting developers to evade payment of levy
- The bank statements presented to the audit team in support of the fraudulent receipts were manipulated
- The Management of the Authority's Finance and Accounting Departments claimed not to be aware of the fraudulent activities
- The authenticated hard copies of bank statements requested on 13 June, 2016 were not availed.
- An addendum was attached to the original report indicating Kshs.5,700,000 out of the original ksh.29,000,000 had been accounted for leaving a balance of Kshs.23,240,000.

3.5.2.5 The Board Audit, Risk and Governance Committee deliberated the Special Audit Report on the 13<sup>th</sup> and 19<sup>th</sup> September, 2016. During the meetings, Mr. Fred Miseda admitted to have issued the 35 receipts in question and owned up to the signature appended in respect to the official receipts. Additionally, he submitted 2 cancelled receipts of Kshs.4,506,431.60 and 3 bank slips dated September, 2016 in lieu of the receipted levies of Kshs.202,919.00. The Officer requested for 60 days to give full accountability of the funds. As at the time of completion of this special audit, an amount of Kshs.1,154,521 had been recovered from the salary of the Officer leaving a balance of Kshs.23,146,076 detailed in **Appendix 50** as public funds misappropriated through fraud at the NCA.

3.5.2.6 Mr. Fred Miseda had accepted this in writing but the management and the Board allowed him to remain in employment allegedly to refund the money by deducting his salary in installments of about 104,956 per month. This was in pretext that the Authority may not recover the money if the officer was arraigned in court. However Fred Miseda resigned on 15 February, 2018 after being recovered only kshs.1,154,521 leaving a balance of Kshs.23,146,076.

### **Disciplinary proceedings for Mr. Fred Miseda**

- 3.5.2.7 The NCA Board Audit, Risk and Governance Committee, recommended that the Executive Director and the NCA Management institute appropriate disciplinary action on Fred Miseda with immediate effect and in line with the Human Resource Policy on employee discipline and report back to the 34<sup>th</sup> Full Board Meeting on the disciplinary action being taken. This decision was communicated to the Executive Director by the Chairman of the Board Audit, Risk and Governance Committee through unreferenced letter dated 20 September, 2016.
- 3.5.2.8 On 22 September, 2016, the Executive Director appointed a special Disciplinary Committee vide an internal memo referenced NCA2/ED/GEN.VOL.1/ (100). The following Officers were appointed to the Committee: Paul Gesora being the Chairman , Paul Kariuki being the Secretary and Samson Lukoba, Stephen Mwilu and Stephen Obare being members. The Committee recommended the Officer to be interdicted.
- 3.5.2.9 Fred Miseda was interdicted on 27 September, 2016 for three (3) months through a letter referenced CONF/C0009/1. He was required to report to the General Manager, Operations 2 days per week .
- 3.5.2.10 The NCA Full Board ratified this decision and resolved during its 34th Full Board meeting held on 11 October 2016 that:
- (a) Management to institute disciplinary action against the Senior Finance officer Mr.Fred Miseda and any other officer(s) implicated in the misconduct. This action is to be taken with immediate effect and in line with Human Resource Policy on employee discipline
  - (b) The Manager Finance to institute revenue recovery process with a view of recovering the levies in question within 14 days.
  - (c) The Executive Director to oversee streamlining of the organizational structure of Accounting and Finance Departments. Officers in this departments to be issued with comprehensive job description clearly outlining their roles and reporting lines.
- 3.5.2.11 The Executive Director through unreferenced internal memo dated 25 October, 2016 to the Manager, Human Resource and Development reported the Board

deliberations and resolution for the Management to institute disciplinary action against Fred Miseda and any other officer implicated in the misconduct.

- 3.5.2.12 During the 13<sup>th</sup> Board, Audit Risk and Governance Committee Meeting held on 7 November, 2016, it was reported that:
- a. Mr. Fred was interdicted on 27 September 2016, and required to report to the General Manager Operations on Mondays and Wednesdays.
  - b. That 6 members' disciplinary committee had been formed on 22 September, 2016
  - c. The General Manager had drafted demand letters to respective developers awaiting the Executive Director signature before dispatch.
- 3.5.2.13 The Board, Audit Risk and Governance Committee deliberated and directed that the disciplinary process against Fred Miseda to be completed within 3 months as provided for in the Authority's Human Resource Policy and this should be on or before 27 December, 2016.
- 3.5.2.14 The Committee recommended Fred Miseda to be surcharged the full amount and be reprimanded for falsification of documents.
- 3.5.2.15 During the 15<sup>th</sup> Board Audit, Risk and Governance Committee meeting, it was reported that the special disciplinary Committee recommended the Officer to be surcharged the full amount from his salary. The recommendation was effected on March 2017 at a rate of Kshs.104,956.46 per month for a period of 216 months. By the time of resigning from the organization on 15 February, 2018, the NCA had recovered only Kshs 1,154,521.06 through the payroll as shown in the table below.

**Table 90: Payroll Recoveries**

	Month	Payroll recoveries (Kshs)
1	March, 2017	104,956.46
2	April, 2017	104,956.46
3	May, 2017	104,956.46
4	June, 2017	104,956.46
5	July, 2017	104,956.46
6	August, 2017	104,956.46
7	September, 2017	104,956.46

	Month	Payroll recoveries (Kshs)
8	October, 2017	104,956.46
9	November, 2017	104,956.46
10	December, 2017	104,956.46
11	January, 2018	104,956.46
<b>TOTAL</b>		<b>1,154,521.06</b>

- 3.5.2.16 In unreferenced letter dated 15 January, 2018, Fred Miseda tendered his resignation that was acknowledged on 6 March 2018 through a letter referenced NCA/0009/48. **Appendix 51** details the disciplinary proceedings.
- 3.5.2.17 Section 74 (1) of the Public Finance Management Act, 2012 PFM Act 2012 provides that subject to the Constitution, the Public Officers Ethics Act, 2003 and the Public Service Code of Ethics or any other relevant laws, if an Accounting Officer reasonably believes that a Public Officer employed by a Government Entity is engaging in, or has engaged in improper conduct within the meaning of subsection (4) in relation to the resources of the entity, the accounting officer shall take appropriate measures to discipline the Public Officer in accordance with Regulations or refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that Public Officer. There was no evidence that the matter was referred to either the EACC or the DCI for investigation and prosecution.
- 3.5.2.18 Section 13.21 of the NCA Human Resource Policy of 2014, requires the amount of the surcharge to be determined by the Disciplinary Committee taking into consideration the cost of damage caused or loss incurred. The surcharge is to be recovered from the employee's salary, but under the following circumstances:
- i. Surcharge will be implemented in monthly installment that shall not exceed 25% of the employee's monthly basic salary.
  - ii. At termination or expiry of the contract, any outstanding amount of surcharge will be settled from the employee's terminal dues except pension benefits which is non-assignable.
  - iii. The employee will sign an agreement undertaking to repay any surcharge that will remain outstanding after exit of the employee.

- 3.5.2.19 The special audit noted that, as at September 2016, the basic salary of Fred Miseda was Kshs.193,600 therefore the surcharge being 25% of the basic salary will have been Kshs.48,400. However, an amount of Ksh.104,956 was surcharged from the Officers salary per month which was more than 25% of the basic salary. There was also no formal agreement on how the balance was to be cleared upon exit from employment contrary to section 13.21 of the NCA Human Resource Policy of 2014.
- 3.5.2.20 It was also established that ,the ICT Manager had been appointed as a Member of the Disciplinary Committee formed on 22 September, 2016 through a letter referenced NCA2/ED/GEN.VOL.1/ (100). The special audit noted that, in all the meetings ,the ICT Manager was absent with apologies.

#### **Suspicious Employment History of Mr. Fred Miseda**

- 3.5.2.21 Through a letter Ref: NCA/HRM/VOL 1/2/10/16, dated 2nd May 2013 (HR), Fred Miseda was offered a casual position as Data Entry Officer at the NCA. On 27 September, 2013, he was invited for an interview as a Senior Accountant. Through a letter dated 2 December, 2013, he was offered employment as a Senior Accountant with effect from 03 December, 2013 and subsequently offered appointment letter on 9 Decembe,r 2013, which he acceptedthe terms and signed it on 11 December, 2013.
- 3.5.2.22 He requested to be re-designated to the Senior Finance Officer through an internal memo addressed to the Acting , General Manager for Operations dated 23 May, 2016 which was accepted by the Management and a decision communicated by the Executive Director through a letter Ref: FM/JUNE2016/dck, dated 3 June, 2016.
- 3.5.2.23 On 3 July 2017 througha letter Ref NCA/0009/46, he was re-designated as an Assistant, Manager Finance the position he held until his resignation on 15 January, 2018. **Appendix 52** details employment history of Fred Misieda.

## CONTACTS

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