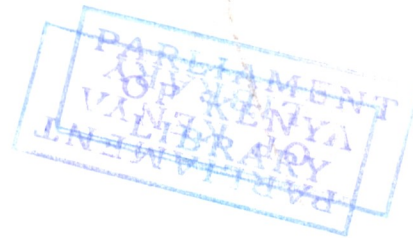


OFFICE OF THE AUDITOR GENERAL



SPECIAL AUDIT REPORT ON THE JUDICIAL SERVICE COMMISSION AND THE JUDICIARY.

APRIL 2014

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ACCRONYMS

AFC	Agricultural Finance Corporation
CRJ	Chief Registrar of Judiciary
EACC	Ethics and Anti-Corruption Commission
IAG	Internal Auditor General
ICT	Information and Communications Technology
IFMIS	Integrated Financial Management Information System
JKUAT	Jomo Kenyatta University of Agriculture and Technology
JSC	Judicial Service Commission
JTC	Judiciary Tender Committee
JTI	Judicial Training Institute
KCB	Kenya Commercial Bank
PAC	Public Accounts Committee
PPOA	Public Procurement and Oversight Authority
PV	Payment Voucher
PWC	PricewaterhouseCoopers

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1. Executive summary

1.1 Introduction

1.1.1 Pursuant to the request by the Public Accounts Committee of the National Assembly on 17 October 2013, vide letter dated 1 November 2013, my office has carried out a special audit on the financial transactions of the Judiciary and the Judicial Service Commission. A similar request was also received from the Chief Justice.

1.1.2 The special audit was conducted between 16 December 2013 and 31 March 2014.

1.1.3 Our terms of reference were:

- i) To review and understand the governance structures at the Judiciary and the Judicial Service Commission (JSC) and confirm whether the structures are in line with the Judiciary and the Judicial Service Commission's mandate as envisaged by Chapter 10 of the Constitution and the Judicial Service Act, 2011.
- ii) Assess whether the Judiciary's procurement procedures are in compliance with the law and laid down regulations;
- iii) Obtain and verify revenue collection records at both the Supreme Court and Milimani Commercial courts and ensure that collected revenue is accounted for in accordance with the law;
- iv) Ascertain whether the human resource recruitment and management is in conformity with Judiciary policies and guidelines;
- v) Establish the lapses in compliance with internal control system and the main causes for these lapses;
- vi) Examine and evaluate the application of Judiciary and JSC foreign travel policy in relation to the Public sector policy;
- vii) Any other issue that we may come across in the course of our audit;

- viii) Come up with an action plan to address the weaknesses and challenges in the system at Judiciary and the Judicial Service Commission.

1.1.4 The team consisted of various individuals with skills and expertise in different fields as follows:

- i) Forensics auditors from the office of the Auditor General;
- ii) Auditors from the Office of the Internal Auditor General;
- iii) Officers from the Public Procurement Oversight Authority.

1.1.5 We have faced various constraints in the course of the assignment that have resulted in delays in the execution and completion of our work.

1.1.6 Specifically, the following constraints have had an implication on our ability to finalize the review on time:

- i) Request to audit Judiciary was made on 1 November 2013 by PAC. It took two weeks for the Office of the Auditor-General to mobilize an audit team.
- ii) When the team was mobilized and went to Judiciary, Judiciary complained that there were too many agencies doing investigation at the time, which was both overwhelming and confusing to them.
- iii) At the time, there were at least another four agencies that were conducting parallel investigations, the Ethics and Anti-corruption Commission (EACC), the Public Procurement Oversight Authority (PPOA), the Office of Ombudsman and the Internal Auditor General from the National Treasury.
- iv) The teams took time to agree on reporting modalities for the work done.
- v) It took at least two months, from the date when the request was made to the time when the teams agreed to work together.
- vi) There was also delay in accessing the voluminous data and files that are scattered over several locations in Nairobi.

vii) We also visited several outstations and these required prior preparations and facilitation.

viii) The Judicial Service Commission limited us by refusing to provide us with copies of minutes of meetings.

1.1.7 This summary of our findings, which should be read in conjunction with the full report and restrictions set out therein, comprises the following sections:-

1.1 Introduction

1.2 Findings and conclusions

1.3 Responsibility and culpability

1.4 Possible claims by Judiciary and Government

1.5 Recommendations

1.2 Findings and conclusions

1.2.1 This investigation revealed a number of irregularities, override of stipulated controls, overstepping of given mandate and breach of procurement laws and regulations and weaknesses in the Judiciary's internal control environment. These findings are discussed in detail in section 2 of this report.

1.2.2 The key objective was to establish whether the financial transactions and operations at the Judiciary were in accordance with the law and Government Financial Regulations and Procedures, and whether there was input or influence of the Judicial Service Commission in the financial operations of Judiciary. The audit has revealed weaknesses in the procurement process at Judiciary and also weaknesses in Internal Controls.

Governance Structures

1.2.3 The Judicial Service Commission is established under Article 171 of the Constitution and provides that, the Chief Justice is the Chairperson while the Chief Registrar is the Secretary to the Commission. The functions of the Commission are stipulated under Article 172 of the Constitution.

1.2.4 The Judicial Service Act, 2011 operationalises Chapter 10 of the Constitution of Kenya 2010, which deals with Judiciary.

1.2.5 According to Article 161 of the Constitution, the Judiciary consists of Judges of Superior Court, Magistrates, other Judicial Officers and Staff. The Chief Justice is the head of Judiciary, while the Chief Registrar of Judiciary is the Chief Administrator and the Accounting Officer. The same article states that the Judicial Service Commission may establish other offices of registrar as may be necessary.

Systems of Courts

1.2.6 Article 162 of the Constitution stipulates the level of Courts in Kenya, which includes the Supreme Court, Court of Appeal, the High Court, Magistrates Courts and other Courts. The Article further stipulates that Parliament can establish other Courts and determine their jurisdiction.

Judiciary Fund

1.2.7 Article 173 of the Constitution of Kenya, 2010 on Judiciary Fund provides that the Fund shall be administered by the Chief Registrar. It also provides that the Fund would be used for administrative expenses at Judiciary.

1.2.8 The Chief Registrar should prepare estimates of expenditure every year and submit them to the National Assembly for Approval. Approved estimates shall be a charge on the Consolidated Fund.

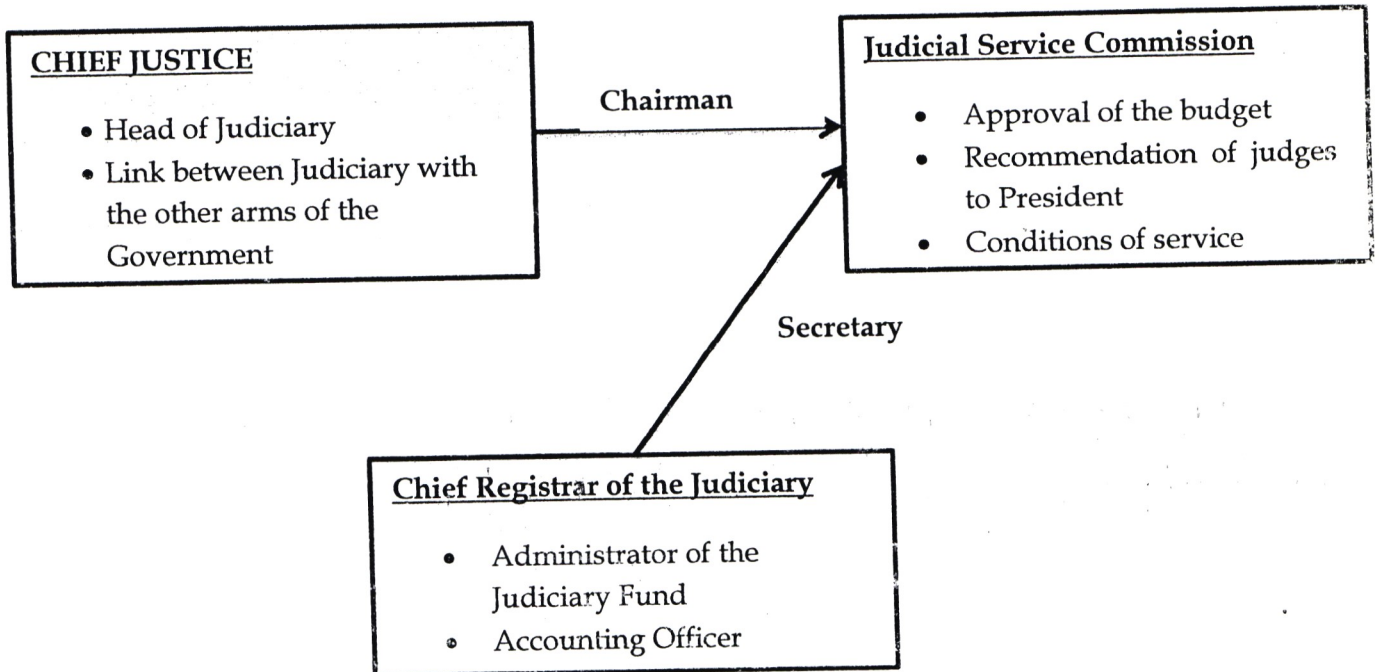
1.2.9 The article provides that the fund shall be regulated by an Act of Parliament. In this Parliament passed the Judicial Service act, 2011.

1.2.10 In the years 2011/2012 and 2012/2013, the Judiciary had a recurrent budget of Kshs.6,807,000,000 and Kshs12,130,816,925 respectively. In addition, the development budget was Kshs 2,159,000,000 and Kshs 1,936,075,729 respectively. The development expenditure was mainly for construction, purchase and refurbishment of buildings.

1.2.11 In the year 2012/2013, an amount of Kshs 390,932,616 had been provided for the Judicial Service Commission.

1.2.12 The administration of the fund is as depicted in table 1 below:-

Table 1: Governance Structure: Summary



Judicial Service Commission

4.1.1 Article 172 of the Constitution provides that the Judicial Service Commission shall promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of Justice.

4.1.2 We however noted instances where JSC has been involved in operational activities or has failed to carry out certain activities:-

- i) Failure to keep minutes of meetings;
- ii) Approval of payments to suppliers;
- iii) Failure to develop a Human Resource and Training Policies;
- iv) Direct procurement of its Offices at Mayfair Center;
- v) Paid rent for Mayfair Center for two years at Kshs.7392,000 before occupying the office.

4.1.3 JSC further sanctioned irregular payment of Kshs. 9.8 million; in allowances to non-commissioners who attended JSC meetings and a further Kshs.1.6 million to

Commissioners who attended meetings that had not been duly constituted in accordance with Section 22(5) of the Judicial Service Act, 2011.

Judiciary

- 4.1.4 In order to achieve its objective of availing justice to the people of Kenya, the Judiciary had developed a five year Judicial Transformation Framework, 2012-2016.
- 4.1.5 In the framework, it was noted that Judiciary's structure had changed in line with the provisions the Constitution, 2010. There was now an increase in the level of courts and number of judicial officers.
- 4.1.6 This increase in judicial officers called for an increase in the recruitment of other paralegal as well as other judicial staff, which also meant an increase in the number of Court Rooms, offices and other infrastructure requirements.

Procurement

- 4.1.7 During the period under review, Judiciary invited bids for premises for lease.
- 4.1.8 The Judiciary tender committee awarded the tenders and entered into four (4) lease agreements whose total rent payable per year amounted to Kshs.156,466,729 per year for six years.
- 4.1.9 The lease agreement between Judiciary and Rahimtulla provided for a rent deposit of six months amounting to Kshs 32,400,00, which was payable based on rent payable with effect from 1 July 2017.
- 4.1.10 We noted that Elgon Place was meant for occupation by Court of Appeal judges but is yet to be occupied by the Court of Appeal judges since 1st April 2013. Judiciary has therefore paid expenditure amounting to Kshs 70,147,605 for premises that has remained unoccupied. This amounts to nugatory expenditure.
- 4.1.11 We also noted that Rahimtulla Tower premises are only 50% occupied.

4.1.12 Purchase of official residence of Chief Justice

4.1.13 Judiciary procured a fully furnished residential property at a total cost of Kshs. 310 million for the Chief Justice. We noted that the property had not been valued by a government or professional valuer. Therefore the value could not be ascertained. The purchase was however sanctioned by the whole Judicial Service Commission.

4.1.14 Procurement of a containerized data center

4.1.15 Judiciary procured a containerized data center at a cost of Kshs.106,720,048.97. The data center was delivered in September 2013, however, the data center is not yet operational.

4.1.16 The vendor has charged Kshs. 18 million for three (3) years' warranty which is subject to maintenance. This was contrary to the provisions in the tender document where a three (3) year warranty was a mandatory requirement for all bidders.

4.1.17 Consultancy services with JKUAT enterprises Ltd

4.1.18 In accordance with Section 4 (2) (c) of the public Procurement and Disposal Act, Judiciary entered into contracts with JKUAT Enterprises Ltd for consultancy services on works undertaken.

4.1.19 We noted that the JKUAT Enterprises Ltd had been paid Kshs. 157,819,037.45 in the period under review.

4.1.20 We also noted that JKUAT Enterprises Limited has entered into memorandum of understanding with Align Architects which is a private firm. The terms of this MOU provides that Align Architects collects 95% of the consultancy fee.

Pre-fabricated Court-houses

4.1.21 Ms Timsales Ltd and Ms Economic Housing Group were contracted to construct prefabricated Court-Houses at a cost of Kshs.326, 658,320 and Kshs. 299,877,654 respectively.

4.1.22 Our physical verification indicated that construction works had commenced in the earmarked towns of Othaya, Marimanti, Wang'uru, Tawa, Garsen and Bomet. The construction of a pre-fabricated court house in Mavoko has not been done because Judiciary does not own land at Mavoko.

Advance payments

4.1.23 Judiciary entered into contracts that had provided for advance payments upon submission of a duly executed bank guarantee, which is contrary to Government Financial Regulations and Procedures. A total of Kshs. 654 million was therefore paid to suppliers as advance payment that represented 30% of the total contracted amount of Kshs2,180 million.

Human resource

4.1.24 We noted that Judiciary employed ninety one (91) temporary staff during the period under review. This included sixty six (66) officers in job groups 'J' and above, whose recruitment was not subjected to JSC approval. In addition, there were selectively accelerated promotions for thirty seven (37) officers but the basis of acceleration was not clearly indicated. JSC ratified these appointments on 1 December 2012.

4.1.25 We were also informed by former Chief Registrar of Judiciary that the officers in question had been seconded to Judiciary from other Government departments and after satisfactorily being appraised and confirmed by JSC, were placed in the right position at the Judiciary.

4.1.26 We further noted that 217 officers were paid allowances in contravention of the Judiciary Scheme of Service. The allowances paid include extra duty and responsibility allowances of Kshs. 42 million and Kshs.1.6 million respectively.

Internal control weaknesses

- 4.1.27 During the period under review the Judiciary paid an amount of Kshs. 262 million towards various expenses without preparation of payment vouchers as required by the Government Financial Regulations and Procedures.
- 4.1.28 We further noted that standing imprest amounting to Kshs 2.7million as at 30 June 2013 issued to officers had not been properly accounted for. Further, no cash books had been kept to record transactions relating to the standing imprest. Consequently, authenticity of expenditure totalling Kshs.800,000 could not be ascertained.
- 4.1.29 A group of Judiciary staff took temporary imprest amounting to Kshs. 39,580,649 for foreign travels without obtaining prior permission of the Chief Justice to travel as it is required under Rule 18 of the Judicial Service Code of Conduct and Ethics.
- 4.1.30 We noted that in the imprest balance of Kshs 39,580,649, an amount of Kshs 5.6 million had been taken by officers who never travelled outside the Country.
- 4.1.31 We also noted that some of the officers arrived earlier or later than the days indicated in the imprest records. As a result, an amount of Kshs 1.4 million should have been refunded to Judiciary. However, this amount has not been refunded.
- 4.1.32 We further noted that Judiciary opened bank accounts without Treasury's Authority.

1.3 Responsibilities and Culpability

Name of officer	Title / Position	Findings	Recommendation
Judicial Service Commission	Commissioners	<ul style="list-style-type: none"> ▪ Interference with day-to-day operations of the Judiciary, by deciding who should be paid. ▪ Failure to prepare a human resource and training policies. ▪ Procurement of lease of premises at Mayfair Center through direct procurement in contravention of the Public procurement and Disposal Act. ▪ Payment of Kshs. 7,392,000 as rent for MAYFAIR Centre for 	<ul style="list-style-type: none"> ▪ JSC to conduct its operations in accordance with Article 172 of the Constitution and provisions of the Judicial Service Act, 2011 ▪ JSC should develop human resource and training policies so as to effectively manage the human resource function. ▪ JSC should adhere to the Public Procurement and Disposal Act, 2005 and Regulations of 2006. ▪ Rent paid in advance should be recovered in subsequent leases. JSC should desist from financing third parties, which is contrary to the Public Finance Management Act and

<p>Gladys Boss Shollei</p>	<p>Former Chief Registrar/ Accounting officer</p>	<p>two years before occupying the building.</p> <ul style="list-style-type: none"> ▪ Payment of sitting allowances to non-commissioners and for meetings that are not duly constituted of Kshs. 9.8 Million and 1.6 million respectively. <ul style="list-style-type: none"> ▪ Appointment of officers in designations outside the scheme of service ▪ Recruitment of (66) sixty six members staff on job group "J" and above without involving JSC as required by law. ▪ Selective accelerated promotions of 36 members of staff. 	<p>Government Financial Regulations and Procedures.</p> <ul style="list-style-type: none"> ▪ Any amounts paid to commissioners and officers, and which is contrary to Judicial Service Act should be recovered in full. ▪ A scheme of service for Commissioners and staff of JSC should be developed to address needs of the JSC members. The scheme could be approved by the Salaries and Remuneration Commission or any other mandated body. <ul style="list-style-type: none"> ▪ JSC should develop a human resource policy that clearly stipulates how each category of employee will be recruited into the service of Judiciary. Recruitment and placement of staff should also adhere to the requirements of Article 10 and 232 of the Constitution of Kenya, 2010. ▪ Any officer who is irregularly recruited should be subjected to the Judiciary recruitment process and if found fit to occupy the office he/she holds should be retained or removed. However, this should be done in conformity with Article 236(b) of the Constitution of Kenya 2010.
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		<ul style="list-style-type: none"> ▪ Non-maintenance of proper ISC minutes ▪ Leasing of Over 43,000 sq feet at Rahimtulla that is currently partially occupied was not necessary and therefore Judiciary is incurring an expenditure of Kshs. 28,782,813 per quarter of the year. ▪ Security deposit (Rent) of six months not based on the current rent but based on rent payable as from 2017. ▪ Payment of rent at Elgon Place of Kshs. 70,147,605 for a whole year yet the building is not occupied. 	<ul style="list-style-type: none"> ▪ JSC should adhere to Sec 23 of the Judiciary Service Act. All minutes should be duly confirmed and signed ▪ The Judiciary should consider the space they already have against their demand so as to make a decision on whether to renegotiate the current lease term. ▪ Judiciary should demand back the entire amount of Kshs.32,410,282 paid as security deposit since rent is payable quarterly. Besides, procurement of premises, like that of goods and other services should always adhere to the Public Procurement and Disposal Act, 2005. ▪ In future all payments should be based on deliveries. The Judiciary should stop financing contracts with suppliers.
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	<ul style="list-style-type: none"> ▪ Advance payment to suppliers of Kshs. 654 million ▪ Payment of Kshs 262 million without proper authorization and documentation ▪ Failure to maintain cashbooks on standing imprest ▪ Overpayment of Kshs. 32 million to JKUAT Enterprises Ltd ▪ Payment of Kshs. 42 million and Kshs. 7.6 million as extra-duty allowances and responsibility allowances respectively. 	<ul style="list-style-type: none"> ▪ In future all payments should be based on deliveries. The Judiciary should stop financing contracts with suppliers. ▪ Preparation of payment vouchers, authorization, approval and examination is mandatory as Per Government Financial Regulations and Procedures. This should be strictly followed at all times. ▪ Each imprest holder should maintain a cash book. ▪ The Kshs 32 Million be recovered and JKUAT be subjected to the tendering processes like any other vendor. The veil behind the actors at JKUAT should be lifted and identities of persons involved disclosed. ▪ If Officers are found to have earned allowances not due to them, then the amounts should be recovered from the respective officers
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		<ul style="list-style-type: none"> ▪ Non-accounting for foreign travels amounting to Kshs.34 million. ▪ Opening of bank accounts without the necessary approval from the Treasury 	<ul style="list-style-type: none"> • All foreign travel expenditure should be properly supported. Further, an amount of Kshs. 1,453,170 should be recovered from the respective officers. • As per the financial regulations and the PFM Act, all government agencies should seek for authority to operate bank accounts.
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1.4 Possible Claims by Judiciary and Government

- 1.4.1 Further to the possible claims noted in 1.3 above, Judiciary can claim any monies for amounts paid outside the contract agreement, e.g. for rent deposits contrary to the lease agreements. Amounts outstanding from the former Chief Registrar of Judiciary.

1.5 Recommendations

Judicial Service Commission

- 1.5.1 Further to the recommendations noted in 1.3 above, the Chief Justice and Judicial Service Commission should set up an executive committee that decides on major decisions in Judiciary. The Executive Committee should comprise the Chief Justice as chairman, the Chief Registrar of Judiciary, as the convener and the various heads of departments and directorates at the Judiciary.
- 1.5.2 The JSC should also develop the necessary policies and structures that should guide the administration of Justice as envisaged in the Constitution.

Former Chief Registrar of the High Court

- 1.5.3 Judiciary should pursue the various suppliers who were paid in advance to either confirm performance of intended contract or to recover funds paid to them in advance.
- 1.5.4 In future Chief Registrars of Judiciary should at all times adhere to the laid down laws in procurement, financial management and human resource management. As accounting Officers, they should attempt to understand the various rules and regulations and government procedures. If some of these rules, procedures and regulations are found wanting or archaic, the alternative would be to petition Parliament for review rather than ignoring them.

Edward R. O. Ouko, CBS
AUDITOR-GENERAL

NAIROBI

11 April 2014

2. DETAILED REPORT

2.1 Introduction

- 2.1.1 Pursuant to the request by the Public Accounts Committee of the National Assembly on 17 October 2013, vide letter dated 1 November 2013, my office has carried out a special audit on the financial transactions of the Judiciary and the Judicial Service Commission for two financial years, 2011/2012 and 2012/2013.
- 2.1.2 In the month of September 2013 the Judicial Service Commission alleged that the Accounting Officer to the Judiciary had carried out the function of her office inappropriately.
- 2.1.3 The issue escalated to the National Assembly where the legal committee of Parliament requested the Auditor General to carry out an audit on the happening in the Judiciary.
- 2.1.4 Further the Chief Justice in consultation with the Ethics and Anti-corruption Commission (EACC), Office AG and Treasury represented by the Internal Auditor General (IAG) had a meeting on 13 November 2013, and decided that a joint audit be undertaken to address the alleged issues of impropriety at the Judiciary.
- 2.1.5 The joint audit commenced in November 2013 when it was agreed in a meeting that the Auditor General in exercise of his Constitutional mandate, Article 229 and Article 254(2), to take the lead in coordination of this exercise.
- 2.1.6 The investigation was conducted between 16 December 2013 and 31 March 2014.
- 2.1.7 Our terms of reference were:
- i) To review and understand the governance structures at the Judiciary and the Judicial Service Commission (JSC) and confirm whether the structures are in line with the Judiciary and the Judicial Service Commission's mandate as envisaged by Chapter 10 of the Constitution and the Judicial Service Act, 2011;

- ii) Assess whether the Judiciary's procurement procedures are in compliance with the law and laid down regulations;
- iii) Obtain and verify revenue collection records at both the Supreme Court and Milimani Commercial courts and ensure that collected revenue is accounted for in accordance with the law;
- iv) Ascertain whether the human resource recruitment and management is in conformity with Judiciary policies and guidelines;
- v) Establish the lapses in compliance with internal control system and the main causes for these lapses;
- vi) Examine and evaluate the application of Judiciary and JSC foreign travel policy in relation to the Public sector policy;
- vii) Any other issue that we may come across in the course of our audit;
- viii) Come up with an action plan to address the weaknesses and challenges in the system at Judiciary and the Judicial Service Commission.

Investigation approach, work done and sources of information

- 2.1.8 In carrying out the audit, we reviewed the Constitution of Kenya 2010 in relation to Judiciary and the Judicial Service Commission, the Judicial Service Commission Act 2011, Public Procurement and Disposal Act 2005, Code of Regulation 2006, Public Finance Management Act 2012 and other relevant legislations;
- 2.1.9 We also reviewed procurement records, analyzed the payroll, reviewed the minutes of JSC and minutes of all committees at the Judiciary;
- 2.1.10 Further, we also reviewed the process of preparing and processing payment vouchers with a view to establishing the various authorization levels.
- 2.1.11 The team consisted of various individuals with skills and expertise in different fields as follows:
- i) Forensics auditors from the office of the Auditor General;

- ii) Auditors from the Office of the Internal Auditor General;
- iii) Officers from the Public Procurement Oversight Authority.

2.1.12 We have faced various constraints in the course of the assignment that have resulted in delays in the execution and completion of our work.

2.1.13 Specifically, the following constraints have had an implication on our ability to finalize the review on time:

- i) Request to audit Judiciary was made on 1 November 2013 by PAC. It took two weeks for the Office of the Auditor-General to mobilize an audit team.
- ii) When the team was mobilized and went to Judiciary, Judiciary complained that there were too many agencies doing investigation at the time, which was both overwhelming and confusing to them.
- iii) At the time, there were at least another four agencies that were conducting parallel investigations, the Ethics and Anti-corruption Commission (EACC), the Public Procurement Oversight Authority (PPOA), the Office of Ombudsman and the Internal Auditor General from the National Treasury.
- iv) At first the teams could not agree as it had not been agreed on reporting modalities for work done.
- v) It took at least two months, from the date when the request was made to the time when the teams agreed to work together.
- vi) There was also delay in accessing the voluminous data and files that are scattered over several locations in Nairobi.
- vii) We also visited several outstations and these required prior preparations and facilitation.

- viii) The Judicial Service Commission limited us by refusing to provide us with copies of minutes of meetings.

2.2 Background Information

Judiciary

2.2.1 Judiciary is established under Chapter 10 of the Constitution of Kenya 2010, which provides for the judicial authority and the legal system in Kenya. The judiciary, as contained in Article 161 (1), consists of the judges of the superior courts, magistrates, other judicial officers and staff. The superior courts include Supreme Court, Court of Appeal and the High Court. The Chief Justice is the head of the Judiciary, the President of the Supreme Court and is the link between the Judiciary and the other arms of Government.

2.2.2 Article 161 (2) (c) states that the Chief Registrar of the Judiciary, shall be the chief administrator and accounting officer of the Judiciary. The Judiciary fund, as established under Article 173 of the Constitution, is a charge on the Consolidated Fund and its estimates are approved by the National Assembly. The fund is used for the administrative expenses of the Judiciary. Under section 8 of the Judicial Service Act, the Chief Registrar is the authorized officer of the Judiciary who is responsible for day-to-day operations and administration of human resources.

Systems of Courts

2.2.3 Article 162 stipulates that:

- i) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts mentioned in clause (ii).
- ii) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to; employment, and labour relations; and the environment and the use and occupation of, and title to, land.
- iii) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (ii)
- iv) The subordinate courts are the courts established under Article 169 of the Constitution or by Parliament in accordance with that Article.

Judiciary Fund

2.2.4 Article 173 of the Constitution of Kenya, 2010 on Judiciary Fund states as follows:-

- i) There is established a fund to be known as the Judiciary Fund which shall be administered by the Chief Registrar of Judiciary.
- ii) The Fund shall be used for administrative expenses of the Judiciary and such other purposes as may be necessary for the discharge of the functions of the Judiciary.
- iii) Each financial year, the Chief Registrar shall prepare estimates of expenditure for the following year, and submit them to the National Assembly for approval.
- iv) On approval of the estimates by the National Assembly, the expenditure of the Judiciary shall be a charge on the Consolidated Fund and the funds shall be paid directly into the Judiciary Fund.
- v) Parliament shall enact legislation to provide for the regulation of the Fund

Judicial Service Commission

2.2.5 The Judicial Service Commission is established under Article 171 of the Constitution and provides that, the Chief Justice is the Chairperson while the Chief Registrar is the Secretary to the Commission.

2.2.6 The functions of the Commission as stipulated under Article 172 of the Constitution are:

- i) To recommend to the President persons for appointment as judges;
- ii) Review and make recommendations on the conditions of service of judges, judicial officers and staff of the Judiciary;
- iii) Appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates, other judicial officers and other staff of the Judiciary in a manner prescribed by an Act of Parliament;
- iv) Prepare and implement programs for the continuing education and training of judges and judicial officers;

- v) Advise the National Government on improving the efficiency of the administration of justice.

2.2.7 The Judicial Service Act, further provides that:

- i) In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have the power to; purchase or otherwise acquire, hold, charge and dispose of movable or immovable property; borrow and lend money; enter into contracts; do or perform all such other things or acts necessary for the proper performance of its functions under the Constitution and this Act, which may be lawfully done or performed by a body corporate.
- ii) Members of the Commission shall be guided in the discharge of their responsibilities by the principles contained in the Constitution and in this Act.
- iii) The Commission shall have all the necessary powers for the execution of its functions under the Constitution and this Act.

2.2.8 Section 23 of the Judicial Service Act, 2011 provides that; the Commission shall keep a record of the proceedings of every meeting of the Commission and its Committees. We observed however, that the Judicial Service Commission (JSC) minutes of meetings held in 2013 had not been duly confirmed and signed so as to make the resolutions legally binding. In addition, some of the minutes were not availed due to inconsistencies in maintaining the minute book.

2.2.9 Further, the unsigned minutes of meetings of the JSC, in the year 2013, revealed that JSC approved payments to various suppliers amounting to Kshs.51,815,435 and also instructed the Director of Finance to ensure that functions of Finance and Accounts are separated at the Judiciary headquarters.

2.2.10 Although the Judicial Service Commission is mandated to develop the Judiciary Human Resource Management and Training Policy, which is to guide the administration of human resource function and training at the Judiciary and JSC, it has not initiated or developed a human resource management and training policy.

2.2.11 The JSC offices at Mayfair Center were procured directly at the insistence of the JSC finance committee contrary to section 29 (1) of the Public Procurement and

Disposal Act, 2005, which states that for each procurement the procuring entity shall use open tendering. In addition, JSC paid rent of Kshs.7,392,000 for two (2) years before occupying the offices.

2.2.12 JSC further sanctioned irregular payment of Kshs. 9.8 million in allowances paid to non-commissioners who attended JSC meetings as either interviewers or to make presentations and a further Kshs. 1.6 million to Commissioners who attended meetings that had not been duly constituted in accordance with Section 22(5) of the Judicial Service Act, 2011. The minutes of the nine (9) meetings that took place not in conformity with Judiciary Service Act, 2011 were not availed for review.

2.3 Terms Of reference

2.3.1 The special audit was conducted on the following terms of reference:

- i) To review and understand the governance structures at the Judiciary and the Judicial Service Commission (JSC) and confirm whether the structures are in line with the Judiciary and the Judicial Service Commission's mandate as envisaged by Chapter 10 of the Constitution and the Judicial Service Act, 2011;
- ii) Assess whether the Judiciary's procurement procedures are in compliance with the law and laid down regulations;
- iii) Obtain and verify revenue collection records at both the Supreme Court and Milimani Commercial courts and ensure that collected revenue is accounted for in accordance with the law;
- iv) Ascertain whether the human resource recruitment and management is in conformity with Judiciary policies and guidelines;
- v) Establish the lapses in compliance with internal control system and the main causes for these lapses;
- vi) Examine and evaluate the application of Judiciary and JSC foreign travel policy in relation to the Public sector policy;

- vii) Any other issue that we may come across in the course of our audit;
- viii) Come up with an action plan to address the weaknesses and challenges in the system at Judiciary and the Judicial Service Commission.

Methodology

2.3.2 The special audit covered 2011/12 and 2012/13 financial years but due to matters arising from examination of records, the focus was extended to 30 September 2013. In carrying out the assignment, the following activities were undertaken:

- i) Review of relevant legislation including Constitution of Kenya, Judicial Service Act, Public Financial Management Act, Government Financial Regulations and Procedures, Public Procurement and Disposal Act etc.
- ii) Review of procurement records including tender documents, Judicial Tender Committee minutes, contracts and lease agreements.
- iii) Analysis of the payroll management system and examination of personnel records.
- iv) Examination of payment vouchers preparation and payment processes (both manual and from IFMIS) and supporting documents that include invoices, purchase orders and delivery notes.
- v) Examination of Judicial Service Commission minutes and Minutes of various Committees.

3 Detailed Findings

The findings as observed during the audit are divided into two.

- i) Issues related to Judicial Service Commission
- ii) Issues related to the Judiciary:

3.1 Judicial Service Commission (JSC)

3.1.1 Examination of the JSC minutes, payments records, attendance lists, payment vouchers and payees of sitting allowances revealed the following:

3.1.2 Governance issues

3.1.2.1 Examination of the JSC minutes for the meetings held between May 2011 and December 2013 revealed that JSC deliberated and made resolutions for issues that are not within their functions as contained in Article 172 of the Constitution and provisions of the Judicial Service Act, 2011. The resolutions made in contravention with the law include:

- i) During the JSC meeting held on 15 September 2011, the Commission deliberated and directed the Chief Registrar to sign the lease agreement for office space for the Commission's secretariat at Mayfair Court, Upper Hill.
- ii) During the JSC meeting held on 21 January 2013, the Commission authorized the management for Elgon Place to proceed with speed and finalize the acquisition of the said premises with a view to move the Court of Appeal to the new building.
- iii) During the JSC Meeting held on 8 February 2013, the Commission deliberated and ratified the decision and recommendations of the Finance and Administration committee with regard to the architectural and floor plan for the Elgon place premises.
- iv) The JSC Finance and Administration committee during its meeting held on 26 April 2013, deliberated and approved the purchase price and recommended for the purchase of the official residence of the Chief Justice. This decision was subsequently adopted by the full JC Meeting held on 10 May 2013.
- v) The JSC Finance and Administration committee in its meeting held on 28 August 2013, deliberated and approved payments to twelve suppliers for supply of various goods and services amounting to Kshs. 51,815,435. The Committee also instructed the Director of Finance to separate the functions of Finance and Accounts to avoid conflict of interest. In the subsequent full JSC 32nd Meeting held on 30 August 2013, the Commission ratified the Finance and Administration committee's decision

and approved payments to suppliers amounting to Kshs. 51,815,435 a function of the Judiciary.

- vi) During the JSC Finance and Administration committee meeting held on 28 August 2013, the Commission instructed the Director of Finance to cease from making and processing any payment.
- vii) During the JSC Finance and Administration committee meeting held on 17 December 2013, the Commission recommended for a payment of Kshs.252,120 to Rachier and Amollo Advocates, an expenditure that was explained in the minutes.

The above issues as deliberated by JSC are duties that should ordinarily be done by the Chief Registrar of the Judiciary, as she was the accounting officer and administrator of the Judiciary Fund.

3.1.3 Maintenance of JSC minutes

3.1.3.1 JSC minutes for all its meetings held in the year 2013 were not duly confirmed and signed so as to make the resolutions legally binding. These resolutions can therefore be challenged in a court of law and are not in conformity with Section 23 of the Judicial Service Act.

3.1.3.2 In addition, the filing of these minutes is not sequential to ensure consistency in review and in view of this the following minutes were therefore not availed during the audit:

Table 2: JSC Meetings not availed for audit

Meeting No	Meeting No	Meeting No
JSC 4/ 2013	JSC 27/ 2013	JSC 33/2013
JSC 5/ 2013	JSC 34/ 2013	
JSC 7/ 2013	JSC 28/2013	
JSC 10 /2013	JCS 29/ 2013	
JSC 20/ 2013	JSC 30/ 2013	

3.1.4 Lease of premises- Mayfair Centre

3.1.4.1 In September 2011, JSC directed the Chief Registrar to enter into lease agreement with Gimco Limited for the secretariat offices at Mayfair Center. It

was however revealed that JSC single sourced for the lease of premises in contravention with Section 29 of the Public Procurement and Disposal Act, 2005. The Commission therefore directly procured for their secretariat offices at an annual charge as shown below:

Table 3: Lease payable for Mayfair Center

PERIOD	RENT PAYABLE (KSHS)	PARKING FEE (KSHS)	TOTAL ANNUAL RENT PAYABLE (KSHS)
01.10.2011 to 30.09.2013	3,456,000.00	240,000.00	3,696,000.00
01.10.2013 to 30.09.2015	3,801,600.00	252,000.00	4,053,600.00
01.10.2013 to 30.09.2017	4,181,760.00	264,600.00	4,446,360.00

3.1.4.2 Further, JSC entered into the lease agreement in October 2011 but the offices were occupied in October 2013. The commission therefore paid rent, service charge and parking bays for two (2) years amounting to Kshs.7,392,000 when actually the offices were not occupied. JSC has not duly signed and executed a lease agreement in order to safeguard the Commission's interests.

3.1.5 Human resource management and training policies

3.1.5.1 Article 172 of the Constitution provides that Judicial Service Commission has the mandate to review and make recommendations on the conditions of service for judicial officers and staff of the Judiciary. In addition, JSC shall prepare and implement programs for continuing education and training of judges and judicial officers.

3.1.5.2 We however observed that Judicial Service Commission has not developed relevant human resource management and training policies that would govern the effective administration of human resource and training at both the commission and Judiciary.

3.1.6 Payment of sitting allowances

Detailed examination of payment vouchers and attendance lists of JSC meetings revealed the following:

3.1.6.1 Irregular Payment of JSC Allowances from the Judiciary Fund and JSC Vote

3.1.6.2 Under Article 250 (7) of the Constitution, the remuneration and benefits payable to or in respect of a commissioner or the holder of an independent office shall be a charge on the Consolidated Fund. It was however noted that JSC Commissioners have continued to withdraw their allowances from the Judiciary Fund and the JSC vote. The payment of these allowances from the JSC Vote is therefore in contravention with the Constitution.

3.1.6.3 Payment of sitting allowances to non-commissioners

3.1.6.4 During the JSC Finance and Administration committee meeting held on 15 July 2011, it was resolved that officers seconded to the Commission would be paid sitting allowance at the rate of Kshs. 10,000.

3.1.6.5 Our scrutiny of the payments voucher against attendance lists and minutes revealed that non-commissioners were paid sitting allowances at the rate of Kshs. 80,000. Therefore, during the period July and December 2013, twenty four (26) non-commissioners were irregularly paid a total of Kshs.9,800,000 as **shown in Appendix I.**

3.1.6.6 Payment of sitting allowance for meetings that are not properly constituted

3.1.6.7 During the period under review, JSC paid sitting allowances to Commissioners for meetings that had not been duly constituted in accordance with the Judicial Service Act, 2011.

3.1.6.8 Section 22 of the Judicial Service Act provides that the quorum for the Commission and any of its committee shall be six (6) and three (3) members respectively. JSC therefore illegally paid sitting allowances of Kshs.1,600,000 for meetings attended as follows:

Table 4: Allowances paid to Commissioners

	DATE OF MEETING	VENUE	ATTENDEES	PAYEE	AMOUNT IN KSHS
1	8-Nov-12	Supreme Court	2	Smokin Wanjala	80,000.00
				John Tamar	80,000.00
2	15-Mar-13	KICC	1	Prof Christine Mango	80,000.00
3	4-Apr-13	Supreme Court	1	Prof Christine Mango	80,000.00
4	19-Jul-13	Inter-Continental Hotel	2	Florence Mwangangi	80,000.00
				Winfrida Mokaya	80,000.00
5	29-Aug-13	Supreme Court	5	Prof Christine Mango	80,000.00
				Florence Mwangangi	80,000.00
				Rev. Samuel Kobia	80,000.00
				Pro Smokin Wanjala	80,000.00
				Winfrida Mokaya	80,000.00
6	14-Oct-13	Crown Plaza Hotel	3	Rev. Samuel Kobia	80,000.00
				Florence Mwangangi	80,000.00
				Nancy Nyamwamu	80,000.00
7	17-Oct-13	Not indicated	2	Florence Mwangangi	80,000.00
				Nancy Nyamwamu	80,000.00
8	14-Sep-12	Court visit in Kitale	2	Florence Mwangangi	80,000.00
				Smokin Wanjala	30,000.00
9	4-Nov-13	Mayfair Center	2	Nancy Nyamwamu	80,000.00
				Florence Mwangangi	80,000.00
				TOTAL	1,600,000.00

3.1.6.9 Further some of the payees are JSC employees and not commissioners and therefore are not entitled to Kshs.80,000 as sitting allowances but Kshs.10,000 as approved by the Commission. In addition, there were no minutes availed for these meetings that did not have a quorum.

3.2 Judiciary

3.2.1 Procurement

3.2.1.1 All procurement of goods and services in Judiciary is subject to the Public Procurement and Disposal Act, 2005 and the Regulations, 2006 made in accordance with this Act. Scrutiny of the procurements carried out by the Judiciary for the period under review revealed the following:

3.2.1 Composition of Tender committee

3.2.1.1 Section 26 (4) of the Public Procurement and Disposal Act provides for the establishment of the tender committee for the purpose of ensuring that its decisions are made in a systematic and structured manner.

3.2.1.2 According to Regulation 10 of the Public Procurement and Disposal Regulations, 2006, the tender committee, as appointed by the accounting officer in writing, shall be composed of a chairman, deputy chairman and five heads of departments. The accounting officer, Ms Gladys Shollei, however appointed the following in writing through a memo dated 23rd January 2012:

Table 5: Composition of Tender Committee

Name	Designation	Position
1 Mr. Francis Kakai Kissinger	Deputy Chief Registrar	Chairman
2 Mr. David Rapando	Deputy Chief Finance Officer	Deputy Chairman
3 Mr. Wycliffe Wanga Obunde	Accounts Controller	Member
4 Mr. Nicholas Mbemba	Executive Officer	Member
5 Mr. Nicholas Okemwa	Legal Officer	Member
6 Mr. Fredrick Momanyi Nyamori	Executive Assistant	Member
7 Mr. Patrick Meyo	Deputy Director , Supply Chain Management Officer	Member
8 Mr. Mutugi Mugambi	Supply Chain Management Officer	Member
9 Mr. Quentine M.Mwiti	Accountant 1	Member

3.2.1.3 These members are not heads of departments and thus do not qualify for appointment in accordance with the Act. In addition, the tender committee

minutes availed indicated, Ms Caroline Kabucha, Mr. M.O. Okwatta and Benedict Omollo as members of the Committee yet their appointment letters were not availed for scrutiny.

3.2.1.4 In our interview meeting with Mrs. Shollei on Tuesday 8 April 2014, she explained to us that these were the most senior officers at the time and when directors were hired, the composition of the Committee was reviewed. As for non-appointed members she indicated that these had been co-opted by Committee members.

3.2.1.5 No documentary evidence was however provided to confirm this assertion.

3.2.2 Lease of premises

3.2.2.1 During the period under review, Judiciary entered into four lease agreements with an estimated annual charge of Kshs. 156 million as indicated below:

Table 6: Leased Premises

LESSOR	BUILDING	Kshs.	LEASE PERIOD
Sealink Holdings Ltd	Elgon Place	70,147,605.00	6 years
Agricultural Finance Corporation	Various Branches	43,537,609.00	5yrs 3 months
Ismail Rahimtulla & Sony Holdings Ltd.	Rahimtulla Towers	39,401,739.00	6 years
Vomorono Ltd	Warehouse	3,379,776.00	6 years
TOTAL		156,466,729.00	

3.2.2.2 Scrutiny of documents availed to us revealed the following:

Tender No. JUD/12/2012-2013- Lease of Premises

3.2.2.3 This tender for lease of premises was advertised on 2 October 2012 and awarded to two bidders, Ismail Rahimtulla & Sony Holdings Ltd and Sealink Holdings Ltd. According to the service details as contained under Section VI of the tender document, the minimum size of the premises to be leased

should have been approximately 40,000 square feet located within the same building and on consecutive floors.

3.2.2.4 **Lease agreement with Ismail Rahimtulla and Sony Holdings Ltd**

3.2.2.5 Scrutiny of documents availed on the lease agreement for the Rahimtulla revealed the following:

- i) The lease agreement has not been duly executed and registered as required by law for last one year so as to safeguard Judiciary interest.
- ii) The Judiciary Tender committee awarded the lease of 41,897 square feet at a monthly charge of Kshs.6,340,157 (annual: Kshs.76,081,889) which included rent payable, service charge and parking fees.
- iii) According to duly signed lease offer between Judiciary and Ismail Rahimtulla Trustees & Sony Holdings Limited, it was however noted that Judiciary tender committee leased 35,224 square feet at a monthly charge of Kshs. 3,283,478.25 (annual: Kshs.39,401,739.00). There was inconsistency between what was awarded and the lease agreement contract.
- iv) Judiciary paid Kshs.32,410,282.50 as rent and service charge for six months. This deposit paid was calculated on the basis of rent payable effective 1st July 2017 of Kshs 4,430,242.75, instead of current applicable rent of Kshs 3,349,000 which was applicable at the time the lease was signed. This led to an overpayment of Kshs.1,080,342.00 per month and the cumulative amount been overstated by Kshs 6,482,056.50 for the six months.
- v) Although these payments are in accordance with the lease agreements, Judiciary did not safe guard public resources and the interest of the judiciary; therefore this payment cannot be justified.

vi) The following payments for this lease were made from Milimani Deposit account no 1116930854, which is maintained at Kenya Commercial Bank Milimani:

Table 7: Payments for Rahimtulla Towers

Date	Payee	Amount
4-Jul-13	Ismaili Rahimtulla Waljee	19,753,420.95
4-Jul-13	Sony Holdings Ltd	19,753,420.95
4-Jul-13	CB Richards Ellis Ltd	9,209,545.10
	Total	48,716,387.00

vii) These funds were later transferred from the Judiciary headquarters to the Milimani Deposits account on 18 December 2013.

viii) The payment of Kshs. 9,209,545 to CB Richards Ellis Ltd was for service charge but the lease agreement availed was only between Judiciary and Ismail Rahimtulla & Sony Holdings Limited.

ix) Our physical verification of the Rahimtulla Towers on 7 February 2014 revealed that Judiciary only occupies 30% of the leased space as indicated below:

Table 8: Occupancy at Rahimtulla Towers

FLOOR	DEPARTMENT	STAFF CAPACITY	STAFF IN PLACE	IDLE CAPACITY	IDLE CAPACITY IN %
4	6 Meeting rooms and 1 staff lounge				
5	ICT, Internal audit and server room	84	32	52	62
6	Directorate of Finance	84	0	84	100
7	Directorate of Supply Chain	84	30	54	64
8	Directorate of Human Resource	84	44	40	48
9	Directorate of Performance Management	84	24	60	71

3.2.2.6 **Lease agreement with Sealink Holdings Ltd**

3.2.2.7 Scrutiny of the availed documents in relation to the lease agreement for the Elgon Place revealed the following:

- i) Section 2.10 of the Tender Document and Appendix thereto states that the prices shall be quoted in Kenya Shillings. The availed tender committee minutes, however indicate that the successful bidder- Knight Frank (K) Ltd had quoted in US Dollars in contravention with the tender specifications.
- ii) According to the service details as contained under Section VI of the tender document, the premises were to be in a serene and secure location and in a good condition, ready to be occupied and not in post-construction state or requiring major reconstruction or renovation. The Tender was however awarded to Knight Frank (K) Ltd who leased out the Elgon Place which was still under construction and was to be ready for occupation in January 2013.
- iii) The Tender committee approved the award to Knight Frank (K) Ltd (agents of Sealink Holdings Ltd) for the lease of 34,400 square feet at a monthly charge of Kshs.4,204,638 (annual: Kshs. 50,455,667) which included rent payable, service charge and parking fees. But according to the duly signed lease agreements between Judiciary and Sealink Holdings Ltd, it was however noted that Judiciary leased for 47,890 square feet at a monthly charge of Kshs.5,845,633 (annual: Kshs.70,147,605). The Judiciary therefore irregularly committed the lease for additional 13,490 square feet at a charge of Kshs. 19,781,736. There was inconsistency between what was awarded and the lease agreement contract.
- iv) There is no duly signed and registered lease agreement between the Judiciary and Sealink Holdings limited therefore the Judiciary interest in the lease is not protected.

- v) Sealink Holdings Ltd was paid Kshs. 43,250,082 on 22 February 2013 through the Judicial Training Institute's (JTI) Account no 1131460456 at KCB, Kiambu Branch. The Judiciary headquarters subsequently reimbursed JTI with Kshs. 43,251,082.10 which was transferred on 7 May 2013.
- vi) Our physical verification on 6 February 2014 confirmed that Elgon Place is meant for Court of Appeal but has not been occupied for one year since the Judiciary signed the lease agreement. Therefore the Judiciary has paid Kshs. 70,147,605 for space that is not occupied.
- vii) JSC deliberated on the issue of lease of premises for Elgon place and authorized the management to finalize its acquisition with a view to moving Court of Appeal to the new premises.

3.2.2.8 Lease agreements with Agricultural Finance Corporation (AFC)

- 3.2.2.9 Judiciary has entered into eleven (11) lease agreements with AFC within the country. Examination and review of availed records revealed the following:
- 3.2.2.10 The Managing Director of Agricultural Finance Corporation (AFC) informed the Chief Registrar of the Judiciary, vide letter ref AFC/MD/12.7 dated 19 November 2012, that the Corporation had the intention of leasing out the extra office space in eleven (11) of their branches.
- 3.2.2.11 In a subsequent letter, ref AFC/MD/12.7 dated 29 November 2012, the managing director indicated that the number of branches with extra space was eighteen (18) and that Judiciary may confirm suitability of the available space.
- 3.2.2.12 In acknowledgement of the letter from AFC, the Deputy Chief Registrar vide letter ref C10/1 dated 3 December 2012, requested for the architectural drawings and status reports for all the listed branches with extra space.

- 3.2.2.13 Judiciary and AFC then entered into eleven (11) lease agreements for eleven Branch offices and were to make an initial payment of Kshs.21, 614,626 which included rent for first quarter, service charge, three months deposit and administrative expenses.
- 3.2.2.14 The leases commit the Judiciary to an annual lease payment of Kshs. 43,537,609 in terms of rent and service charge for five (5) years three (3) months as shown on **Appendix II**.
- 3.2.2.15 It was however confirmed that Judiciary has only paid Kshs. 3,654,763, Kshs. 1,827,491 and Kshs. 872,784 for leases of Meru, Nakuru and Turbo offices respectively.
- 3.2.2.16 Judiciary do not have duly signed and registered lease agreements for ten (10) out of the eleven (11) leases it has entered into with AFC.
- 3.2.2.17 Physical inspection of the AFC offices revealed that Judiciary has only partially occupied the Meru and Kakamega offices.
- 3.2.2.18 During an interview with Mr. Kissinger Kaikai, the Deputy Chief Registrar of the Judiciary, we were informed that the leases had been cancelled. However, no documentary evidence has been provided to support this assertion.
- 3.2.2.19 **Tender no. JUD/16/2012-2013 – Lease of a Commercial Warehouse**
- 3.2.2.20 This tender was advertised on 14 November 2012 and was awarded to Legend Valuers at a cost of Kshs.3,379,776 per annum for a space of 4,506 square feet. Our review of the tender opening minutes, evaluation reports and tender committee minutes revealed the following:
- i) According to service details as contained under Section VI of the tender document, the premises should be in a serene and secure location and in a good condition, ready to be occupied and not in post-construction state or requiring major reconstruction or renovation. The Contract was

awarded to Legend Valuers whose premises were in a post construction state.

- ii) Tender committee awarded the contract to Legend Valuers but the availed lease agreement was entered between Judiciary and Vomorono Ltd. There was no documentary evidence to indicate the relationship between Legend Valuers and Vomorono Ltd.
- iii) The lease agreement between Judiciary and Vomorono Limited is not dated and therefore the effective date of the agreement could not be established.
- iv) Physical inspection of the Vomorono (go downs) Hifadhi house in industrial area revealed that Judiciary has occupied the warehouse.

3.2.2.21 In our meetings with the former Chief Registrar of Judiciary, and the Deputy Chief Registrar, they informed us that the leases had been given to the lawyers for registration and they are likely to be concluded soon.

3.2.3 Direct procurement

3.2.3.1 Under Section 74 of the Public Procurement and Disposal Act, a procuring entity may use direct procurement if the following are satisfied:

- i) There's only one person who can supply the goods, works or services,
- ii) There's no alternative or substitute for the goods, works or services
- iii) There's an urgent need for the goods , works, or services being procured

3.2.3.2 In addition, section 29 (3) of the Public Procurement and Disposal Act states that a procuring entity may use direct procurement only if before using that procedure, the procuring entity obtains a written approval of its tender committee and record in writing the reasons of using direct procurement.

3.2.3.3 During the year 2012-2013, Judiciary entered into twelve (12) contracts amounting to Kshs.341,622,761 (as per Appendix III) through direct procurement in contravention of Sections 29 (3) and 74 of the Public Procurement and Disposal Act 2005.

3.2.3.4 Our review of the specific tenders awarded under direct procurement revealed the following:

3.2.3.5 **Direct procurement of second hand furniture and fitting from PricewaterhouseCoopers – Kshs. 59,699,492**

3.2.3.6 Judicial Tender committee (JTC) meeting held on 10 June 2013 awarded PricewaterhouseCoopers (PWC) the direct procurement of various used (or second-hand) furniture and fittings at the Rahimtulla Towers at a cost of Kshs.59,699,492. Under section 74 of the Public Procurement and Disposal Act, a procuring entity may use direct procurement so as not to avoid competition and the following should be satisfied:

- i) Only one person can supply the goods
- ii) There is no reasonable alternative or substitute for the goods

3.2.3.7 The reasons for direct procurement as discussed by JTC meetings held on 23 November 2012 and 10 June 2013 were that the Rahimtulla offices previously belonging to PWC and that they were the only people who could supply those goods. In addition, it was mentioned that the other alternative, which was deemed unreasonable, was that PWC demolish the partitions and Judiciary go through tendering process while paying for unoccupied building.

3.2.3.8 According to the signed contract dated 25 June 2013 between Judiciary and PWC, the second-hand furniture and fitting procured were as follows:

Table 9: Payments to PWC for old furniture

Item	Amount
1 Furniture - tables, chairs, partitions	30,215,638.69
2 Networking equipments- cisco, PABX and cablin	30,511,892.81
3 Carpets	3,738,960.00
Total	64,466,491.50
Less dicount (as per contract)	(4,766,998.60)
Total contract value	59,699,492.90

3.2.3.9 The value of these assets was as a result of negotiations between PWC and Judiciary team which had been appointed by the accounting officer in accordance with Regulation 58 of the Public Procurement and Disposal Act and Regulations. The valuation of these assets was however done by JKUAT Enterprises Ltd and scrutiny of the valuation reports revealed the following:

- i) The valuation of furniture which included carpets is dated 30 May 2013 and was done on the basis of depreciated replacement cost, which is an estimate as recorded in the books of accounts. The items were valued at Kshs. 32,550,000.
- ii) The valuation of ICT equipments which included the network equipments was done on the basis of information from supplier of the assets. The valuation was for USD\$252,173.78 (i.e. Kshs.21, 939,118.86 @exchange rate of Kshs.87) and is dated on 29 July 2013.
- iii) Our physical inspection on 7 February 2014 revealed that the furniture was in existence and that the networking equipments had not been operationalized yet the amount of money involved is colossal.

3.2.3.10 Direct procurement of fit-outs at Elgon place- Kshs. 188,059,723

3.2.3.11 Judicial Tender Committee meeting held on 13 March 2013 awarded direct procurement of fit-outs at Elgon place at a cost of Kshs.188,059,723. Under section 74 of the Public Procurement and Disposal Act, 2005.

3.2.3.12 The reasons for the direct procurement as discussed in the JTC meeting were that in the circumstances of the lease agreement, only one person could provide the services and that the works were substantial and needed to be completed with urgency.

3.2.3.13 It was further noted that the cost of the fit-outs was based on an agreement for building works between Sealink Holdings Ltd and Sentrim Contracts Ltd of which Judiciary was not party to. This agreement has not been dated and therefore its commencement date could not be established. The full Judicial Service Committee (JSC) meeting held on 8 February 2013, however deliberated and ratified the decision and recommendations of Finance and Administration committee with regard to architectural and floor plan for the Elgon place premises.

3.2.4 Purchase of official residence of Chief Justice

3.2.4.1 Judiciary Tender Committee meeting held on 27 March 2013 awarded M/s Johnson Nduya Muthama Holdings Ltd for the purchase of a fully furnished

residential property at a total cost of Kshs. 310 million. The available valuation report by JKUAT Enterprises Ltd dated 14 March 2013 has not been duly signed and it clearly indicates that a final valuation of the property has not been finalized.

3.2.4.2 The payment of Kshs. 310 million was therefore made without a reliable and authentic valuation report. It was further noted that in May 2013, the full Judicial Service Commission meeting deliberated and approved this purchase price on the basis of the valuation and security survey conducted by the consultants.

3.2.5 Procurement of a containerized data center

3.2.5.1 Judicial Tender Committee meeting held on 23 November 2012 awarded Dimensions Data the tender for the supply, installation and commissioning of a containerized data center at a cost of Kshs. 106,720,048.97. A containerized data center is a highly integrated container which integrates all systems in one container, including power supply & distribution, cooling, IT cabinets and cabling.

3.2.5.2 On scrutiny of the procurement records, correspondences and discussions held with ICT personnel, the following issues were however revealed:

- i) The accounting officer Ms Gladys Shollei approved this procurement following a memo from the Director of ICT, Mr. Thomas Atak. In the memo ref: JUD/ICT/3/Vol.I/48 dated 3 September 2012, Mr. Atak had requested for purchase of a container data center on grounds that there was limited space at the Supreme Court buildings for the expansion of the existing data center.
- ii) Physical inspection of the existing data center on 30 January 2014 revealed that the room was also being utilized as a store for new computers, which had occupied one-half of the room.
- iii) The containerized data center was delivered in September 2013 and our physical verification on 30 January 2014 confirmed that this data center is not operational after having spent Kshs.106,720,048.

- iv) According to the contract between Judiciary and Dimensions Data, the vendor has charged Kshs. 18 million for three (3) years' warranty which is subject to maintenance. This was contrary to the provisions in the tender document where a three (3) year warranty was a mandatory requirement for all bidders.
- v) Judiciary did not consider alternatives prior to procurement of the containerized data center. Some of these alternatives which could have been cheaper include availability of a spacious room within Supreme Court and cloud computing.

3.2.6 Consultancy services with JKUAT enterprises Ltd

3.2.6.1 In accordance with Section 4 (2) (c) of the public Procurement and Disposal Act, Judiciary entered into contracts with JKUAT Enterprises Ltd for consultancy services on works undertaken. Our review of the consultancy agreements, payment vouchers and inspection of documents at the JKUAT Enterprises offices revealed the following:

3.2.6.2 JKUAT Enterprises Ltd entered into consultancy agreements of Kshs. 157,819,037.45 for the following contracts as shown below:

Table 10: Payments to JKUAT Enterprises Ltd

Date	Consultancy	Date	Rate	cost of the works	Consultancy Fee
12/10/2012	Completion works to Narok law courts	28/9/2012	8.75%	104,644,651.50	10,464,465.15
12/10/2012	Proposed prefabricated court houses	12/10/2012	10%	951,000,000.00	95,100,000.00
12/10/2012	Completion works to Kisumu law Courts	1/10/2012	10%	334,486,000.00	33,448,600.00
15/4/2012	Proposed fit-outs at Elgon Place	10/4/2012	10%	188,059,723.00	18,805,972.30
					157,819,037.45

3.2.6.3 JKUAT Enterprises was paid an advance consultancy fee of Kshs. 82,370,000 for the proposed pre-fabricated court houses that were to be erected countywide. This consultancy fee as per the agreement is 10% of the actual contract price, however the initial 10% paid was made on the basis of total cost for the works at Kshs. 951 million instead of the actual contracted

cost of Kshs. 626,535,974. Therefore, JKUAT Enterprises has been over paid by Kshs. 32,446,402 as indicated below:

Table 11: Overpayments to JKUAT Ltd

Rate	Cost of Works	Amount
10%	951,000,000.00	95,100,000.00
10%	626,535,974.00	62,653,597.40
		32,446,402.60

This overpayment can be recovered from JKUAT Enterprises Ltd, which is a government entity.

3.2.6.4 On 14 June 2013, the JSC Finance and Administration Committee deliberated on the issue of JKUAT Enterprises and resolved that JKUAT as a Government agency shall continue to be Judiciary's Project Supervisor and shall be engaged in architectural drawings, preparation of bills of quantities and project supervision.

3.2.6.5 Further we established that JKUAT Enterprises has entered into memorandum of understanding with Align Architects which is a private firm. The terms of this MOU provides that Align Architects collects 95% of the consultancy fee. Therefore JKUAT Enterprises is assisting private firms to avoid competition and rigorous tendering process. The contract between JKUAT Enterprises with the Judiciary should be stopped immediately and further investigation carried on JKUAT Enterprises.

3.2.7 Pre-fabricated Court-houses

3.2.7.1 The Judicial Tender Committee during its meeting held on 27 November 2012 awarded the contracts for the pre-fabricated court-houses to M/s Timsales Ltd and M/s Economic Housing Group at Kshs.326,658,320 and Kshs. 299,877,654 respectively as shown below:

Table 12: Payments for pre-fabricated Court Houses

	Supplier	Town	Amount in Kshs
LOT 1	M/s Economic Housing Group	Bomet	81,664,580.00
LOT 2	M/s Economic Housing Group	Othaya	81,664,580.00
	M/s Economic Housing Group	Marimanti	81,664,580.00
	M/s Economic Housing Group	Wang'uru	81,664,580.00
LOT 3	M/s Timsales Ltd	Tawa	99,959,218.00
	M/s Timsales Ltd	Mavoko	99,959,218.00
	M/s Timsales Ltd	Garsen	99,959,218.00
			626,535,974.00

3.2.7.2 In accordance with the contracts and on the basis of a bank guarantee, Timsales and Economic Housing Group were paid advance payments of Kshs. 126,703,827 and Kshs. 26,469,832 respectively.

3.2.7.3 The physical verifications done in March 2014 revealed that the construction of pre-fabricated courthouses was on-going apart from Mavoko where no works had been done. It was explained that Judiciary could not commence any works because it did not own the land in Mavoko.

3.2.8 Advance payments

3.2.8.1 Section 14.7 of the Government Financial Regulations and Procedures provides that payments to contractors should be made on the basis of signed contracts and a payment voucher prepared that is supported by certified delivery of goods, works and services.

3.2.8.2 During the period under review, however, Judiciary entered into fifteen (15) contracts, which only required contractors to submit a bank guarantee in order to receive advance payments. The advance payments made to suppliers during the period under review amount to Kshs. 681,173,291.50 (as per Appendix IV).

3.3 Human resource management

3.3.0 During the period July 2011 and June 2013 a total of 662 new officers including magistrates were recruited by the Judiciary. Analysis of the payroll management system, IPPD and examination of personnel files revealed the following:

3.3.1 Recruitment of staff on temporary basis

- 3.3.1.1 Section E.20 (1) of the revised Code of Regulations, 2006 states that appointment on temporary terms will be confined to those cases where the service of an officer would not normally be required beyond a period of twelve months or where a candidate does not qualify for appointment to the particular vacancy other than on temporary terms under the service regulations. Section E. 20 (2) also states that any officer in job group 'J' and above would require the approval of the Judicial Service Commission.
- 3.3.1.2 During the period between August 2011 and June 2013, the accounting officer authorized recruitment of ninety one (91) temporary staff (**as shown in Appendix V**) in contravention with these regulations.
- 3.3.1.3 The recruited employees are mainly ICT officers, legal researchers and support staff. In addition, there was no approval of the Judicial Service Commission for the recruitment of sixty six (66) officers (**as per Appendix VI**) who were in job group 'J' and above.
- 3.3.1.4 During the interview with the former Chief Registrar of Judiciary, Mrs. Gladys Shollei explained that the Judiciary was relying on the Judicial Service Staff Regulations, 2008. Section B.4 of these regulations states that appointment on temporary terms may be made for a period not exceeding one year, without the authority of the JSC, but may not be continued for a longer period without such authority.

3.3.2 Appointment of officers in designations outside the scheme of service

- 3.3.2.1 Section E.26 of the Revised Code of Regulations, 2006 states that the grading structure, qualifications and other requirements for recruitment are laid down in the scheme of service.
- 3.3.2.2 The authorizing officer of the Judiciary, however, recruited eighty six (86) employees (**as per Appendix VII**) whose designations are not contained in the Judiciary's Scheme of Service.
- 3.3.2.3 These designations include chief of staff, deputy chief of staff, legal researchers, law clerks, graphic designer, principal facilities officer and administrator.

3.3.2.4 It was however noted that Judicial Service Commission advertised, shortlisted and appointed legal researchers and law clerks.

3.3.3 Irregular promotion of employees

3.3.3.1 According to Section E.27 (2) of the Revised Code of Regulations, in selecting candidates for promotion, regard will be given to merit and ability as reflected in work performance and results as well as seniority, experience and official qualifications.

3.3.3.2 The authorizing officer however, selectively accelerated promotions and irregularly upgraded thirty seven (36) officers. For instance, the officers were promoted by two (2) or more job groups within a period of twelve (12) months.

3.3.3.3 In view of this, the officers have irregularly been paid salaries for job groups which they are not entitled to. Therefore, a total of **Kshs.70,849,035** may have been irregularly paid. (See Appendix VIII)

3.3.4 Payment of extra duty allowance

3.3.4.1 Analysis of the payroll management system revealed that 114 officers have irregularly been earning extra duty allowance on a monthly basis contrary to the scheme of service, which only provides for payment of extraneous allowances. These officers have therefore been paid **Kshs.42,067,474** between October 2011 and June 2013 (See Appendix IX)

3.3.5 Payment of Responsibility allowance

3.3.5.1 According to the scheme of service, officers in job group 'J' and above are entitled to responsibility allowance at the approved rates. It was however revealed that 103 officers in job groups 'J' and below have been irregularly earning responsibility allowances. The officers irregularly earned responsibility allowances amounting to **Kshs.7,637,879.45** as shown in Appendix X.

3.4 Internal control systems

3.4.1 Non-preparation of payment vouchers

3.4.1.1 According to section 5.5.13 of Government financial regulations and procedures, payment vouchers should be prepared in respect payment in

settlement of goods and services which have been supported by purchase orders, deliveries and invoices: The regulations further state that vouchers will be subjected to examination and authorization by an authorized officer for payment.

- 3.4.1.2 It was however noted that the following payments were made without voucher preparation, examination, authorization and approval of payments:

Table 13: Payments not supported by payment vouchers

	Period	Payee	Kshs
1	Feb 2013	Sealink Holdings Ltd	43,250,082.00
2	Aug 2012	Various courts and suppliers-Judicial Marches	42,356,526.00
3	12-Feb-13	Sealink Holdings Ltd	42,066,988.00
4	12-Apr-13	Evans Simiyu Werunga	29,934,975.00
5	Feb 2013	Economic Housing Group	26,469,832.00
6	4-Jul-13	Ismail Rahimtulla Waljee	19,753,420.95
7	4-Jul-13	Sony Holdings limited	19,753,420.95
8	15-Jul-13	KTK Advocates	18,365,940.00
9	4-Jul-13	CB Richards Ellis	9,209,387.10
10	Mar 2013	Odds and Ends Ltd	4,835,000.00
11	12-Feb-13	Agricultural Finance Corporation	3,654,763.00
12	5-Apr-13	Agricultural Finance Corporation	1,827,491.00
13	7-Mar-13	Agricultural Finance Corporation	872,784.00
14	26-Mar-13	Evans Simiyu Werunga	306,000.00
			262,656,610.00

3.4.2 Approval of payment of sitting allowances to staff

- 3.4.2.1 According to Article 172 (1) of the Constitution, the Judicial Service Commission is mandated to review and make recommendations on the conditions of service of Judiciary staff. However, in a memo ref: JUD/FIN/CR/Vol. I (35) dated 12 April 2012 the Chief Registrar approved the payment of sitting allowances to various committees of the Judiciary. The committees include tender committee, procurement committee, human resource management advisory committee, and inspection and acceptance committee as shown below:

Table 14: approved sitting allowances for Judicial Staff

Membership	Tender Committee	Procurement Committee	HRM Advisory Committee	Inspection and Acceptance Committee	Tender opening/ Evaluation Committee
Chairman	25,000.00	25,000.00	25,000.00	10,000.00	10,000.00
Member/Secretary	20,000.00	20,000.00	20,000.00	8,000.00	8,000.00
Secretariat	10,000.00	10,000.00	10,000.00	5,000.00	5,000.00

3.4.2.2 This payment of allowances to Judiciary staff has neither been reviewed nor approved by the Judicial Service Commission.

3.4.3 Issuance of standing imprest

3.4.3.1 According to section 5.6 of the Government Financial Regulations and Procedures, the holder of a standing imprest must keep a cash book to record all cash receipts, cash payments and balance on hand which must agree with cash balance recorded in the cash book.

3.4.3.2 The standing imprest as at 30 June 2013 stand at Kshs. 2.7 million held by 24 officers at the Supreme Court and our spot check on the standing imprest holders of Kshs. 800,000 (33%) revealed the following:

- i) The imprest holders do not maintain a cash book for the standing imprest, and
- ii) The imprest is in the personal bank accounts of the holders

3.4.4 Foreign Travels

3.4.4.1 Examination of expenditure incurred on foreign travels revealed the following:

Approval of Foreign travels

3.4.4.2 Review of documents related to foreign travels by Judiciary staff for the period 2012/2013 revealed that the accounting officer, Mrs. Gladys Shollei authorized foreign trips/travels in contravention with Rule 18 of the Judicial Service Code of Conduct and Ethics.

3.4.4.3 This Rule states that a judicial officer and any other officer in the Judicial Service, who at any time wishes to travel outside Kenya, shall obtain the prior permission of the Chief Justice.

Accounting of imprest on foreign travel

3.4.4.4 Provisions of section 71 of the Public Financial Management Act indicate that a public officer to whom cash advance has been made to make payments in the course of their duties shall account for the advance with signed supporting documents. In addition, the Government financial regulations state that holders of temporary imprest issued for purposes of travelling and accommodation should account for the imprest within the stipulated period on return to their station of duty.

3.4.4.5 It was noted that some Judiciary staff members traveled outside the country and incurred expenses on the Judiciary account but did not account for imprest properly and the surrender vouchers were not supported with relevant documents. We therefore requested for individual passports to authenticate and verify that staff indeed travelled outside the country. Most members of staff presented their passports except for the following who did not present their passports for verification:

Table 15: Imprest owing from staff who did not travel

PV Date	PV No	Name	Amount issued
27-Aug-12	1134	Lyna Sarapai	1,856,400.00
27-Aug-12	1135	Shadrack Mwendwa	1,856,400.00
30-Jun-13	8572	Daisy Jepkemboi Mosse	1,141,159.60
28-May-12	12647	Charles Gitonga mbogo	319,865.00
12-Oct-11	2948	Patrick M. Chege	136,217.81
			5,310,042.41

3.4.4.6 In addition, we noted that the following officers did not travel within the approved dates and therefore underutilized imprest issued of Kshs.1,453,170 is recoverable:

Table 16: Under- utilized imprest that has not been refunded

Name	Country	Approved and Paid Dates	Actual Departure date	Actual Arrival date	Days in Kenya	Recoverable Amount	Remarks
Benedict Omollo	USA	26 Sept - 11 Oct 2012	27-Sep-12	7-Oct-12	7	712,868.52	Travelled later and arrived back earlier
Chrispine Kabiro	USA	26 Sept - 6 Oct 2012	28-Sep-12	8-Oct-12	2	195,529.65	Travelled later date
Dismus Omondi	Senegal	23 June - 28 June 2013	23-Jun-13	28-Jun-13	3	39,726.71	Was issued imprest for 8 days
Hellen Nyamuiru	USA	26 Sept - 6 Oct 2012	28-Sep-12	8-Oct-12	2	187,552.31	Travelled later date
Samuel Ngure Ndungu	Colombia	13 Sept - 25 Sept 2013	13-Sep-13	23-Sep-13	2	5,393.42	Arrived back earlier
Thomas Atak	USA	26 Sept - 6 Oct 2012	28-Sep-12	9-Oct-12	2	203,676.73	Travelled later date
Duncan Okello	Tanzania	5 Nov - 7 Nov 2012	-	-	2	168,422.70	Did not travel
						<u>1,453,170.04</u>	

3.4.5 Amounts owing from Gladys Boss Shollei

3.4.5.1 Examination of the accounting records including payment vouchers and miscellaneous receipts indicate that Gladys Boss Shollei owes Kshs. 3 million to the Government of Kenya. The CRJ is a constitutional office holder whose salary is drawn directly from the consolidated fund account. She is not legible to draw salary from the Judiciary. The details of this outstanding amount are as follows:

Table 17: Amounts owing from former CRJ

Date	Invoice No	Remarks	Amount
31-Oct-12	STD311012	Salary Advance	2,314,125.00
30-Jul-09	STD270709	Current Grant	400,000.00
30-Jan-14		Personal expenses on staff credit card	334,173.90
			<u>3,048,298.90</u>

3.4.6 Bank accounts

3.4.6.1 Judiciary maintains bank accounts at Kenya Commercial Bank and Central bank of Kenya for their day-to-day operations. During the audit in which we examined records maintained for these bank accounts, the following were noted:

Opening bank accounts without Treasury's authority

3.4.6.2 Section 28 (1) of the Public Financial Management Act and section 5.9.3 (1) of the Government Financial Regulations and Procedures provides that Treasury shall authorize the opening, operating and closure of all bank accounts for all national government entities, which include Judiciary. It was however revealed that Judiciary opened revenue, deposits and recurrent bank accounts for all the law courts in the country. These bank accounts include the following:

Table 18: Bank Accounts opened with Treasury's Authority

ACCOUNT NO	ACCOUNT NAME	BANK	DATE OPENED
1000182342	Deposits Account	Central Bank of Kenya	1-Aug-13
1129777367	Judiciary Training Institute Milimani Law courts	Kenya Commercial Bank	10-Nov-11
113146056	Recurrent account	Kenya Commercial Bank	1-Sep-11

3.4.6.3 There was no evidence availed to us to show that Treasury authorized the opening of all the bank accounts maintained by Judiciary.

Operation of two Deposit accounts concurrently

3.4.6.4 Available bank statements from Central Bank of Kenya indicate that Judiciary is concurrently maintaining two Deposit accounts no 010101026 and 1000182342. These bank accounts have been concurrently maintained since 1 August 2013. The Judiciary has not justified the operation of the two deposit accounts. In addition, there is no cash book maintained for the Deposit account 1000182342 and therefore there is no proper audit trail of transactions that are undertaken through this account.

Cash and Bank records maintained

3.4.6.5 Section 5.9 of the Government Financial Regulations and Procedures provides that cash books should be maintained and updated daily and be examined by a senior officer regularly. The bank reconciliation statements should also be prepared monthly so as to reconcile bank and cash book balance. In addition, the accounting officer is required to appoint a board of

survey annually for the purpose of examining and verifying the cash on hand and bank balances as at the end of each financial year.

3.4.6.6 It was noted that the cash books for the following accounts were not regularly updated and that the board of survey had not verified the balances as at the end of the financial years 2011/2012 and 2012/2013:

Table 19: Bank Accounts with Poorly maintained Cashbooks

ACCOUNT NO	ACCOUNT NAME	BANK
1129777367	Judiciary Training Institute	Kenya Commercial Bank
113146056	Milimani Law courts Recurrent account	Kenya Commercial Bank
1116930854	Milimani Law courts Revenue account	Kenya Commercial Bank
1116928477	Milimani Law courts Deposit account	Kenya Commercial Bank

Signatories to the Judiciary bank accounts

3.4.6.7 Available records from the Kenya Commercial Bank (KCB) High Court Branch indicate that the following as signatories to the Judiciary accounts yet these officers are currently not employees of the Judiciary: This leaves the Judiciary vulnerable since the officer who are no longer in Judiciary employment can still transact on behalf of the judiciary.

Table 20: Bank Accounts with signatories outside of Judiciary

1	MILIMANI LAW REVENUE A/C 1116924877
	Adonisha Wangari Ndua
	Gladys Boss Sholei
2	MILIMANI LAW DEPOSIT 1116930854
	Gladys Boss Sholei
3	MILIMANI LAW RECURRENT 1129777367
	Mr Mutembei, Gilbert Cabari

Payments made from the Milimani Courts Deposit Account

- 3.4.6.8 Deposit account holds cash bails, cash bonds and court deposits for persons awaiting their cases to be determined. These funds are either refundable to clients or converted to government revenue as fines upon hearing and determination of the court case. Section 8.6.2 of the Government Financial Regulations and Procedures states that "under no circumstances should an accounting officer regard deposits received by him/her as providing cash available for use for purpose other than those for which it was lodged". Further, section 5.5.13 states that "payment vouchers will be prepared in respect of demands for settlement of goods and services which have been supplied or rendered".
- 3.4.6.9 The following payments amounting to Kshs. 67,082,169 were however authorized for payment from the Milimani deposit account to suppliers and there were no payment vouchers prepared and examined in contravention of the regulations and therefore the payment was irregular to the extent that it was done from the wrong account.

Table 21: Payments from Deposits Account

Date	Supplier	Amount
4-Jul-13	Ismail Rahimtulla Waljee	19,753,420.95
4-Jul-13	Sony Holdings limited	19,753,420.95
15-Jul-13	KTK Advocates	18,365,940.00
4-Jul-13	CB Richards Ellis	9,209,387.10
		67,082,169.00

- 3.4.6.10 Although these funds were later transferred from the Judiciary headquarters to the Milimani deposit account on 18 December 2013, the first instance of paying from the deposit account contravenes the law.

Judicial Training Institute (JTI).

- 3.4.6.11 JTI was established in 2008 to offer education and training to staff involved in the administration of justice. The institute's main objective is to train judicial officers on better methods of service delivery.

3.4.6.12 Scrutiny of the cash book, payment vouchers, bank transfers and bank statements maintained at JTI revealed the following:

- i) During the period between November 2011 and June 2013, the cash book entries were not regularly balanced and closed on a daily basis as it is required by section 5.9 of the Government Financial Regulations and Procedures. In addition, the bank reconciliation statements were not prepared so as to test the accuracies of the cash book entries against the bank statement.
- ii) It was further established that for the financial years 2011/12 and 2012/13, the accounting officer did not appoint a board of survey to examine and verify cash on hand and bank balances as at 30 June of each financial year.
- iii) During the 2012/2013 financial year, the printed estimates indicated that JTI would be allocated Kshs. 234,646,548. Subsequently, during the supplementary estimates, the budgetary allocation for JTI was reduced to Kshs. 134,605,893.
- iv) It was however noted that the Director of JTI was given Authority to Incur Expenditure (AIE) amounting to Kshs.263,509,384. The Accounting officer therefore irregularly allowed JTI to incur expenditure of Kshs.128,903,491 that had not been budgeted for.
- v) In a letter ref: JA/DB dated 18 March 2013, the authorized signatories to JTI bank account were changed to Chief Registrar, Deputy Chief Registrar, Director Finance and Ag. Director- JTI, where any two would sign. This is an indication that the control of the funds in the JTI bank account was not solely under the Institute.
- vi) JTI paid for the Presidential Inauguration expenses amounting to Kshs.62,816,343 (as shown below) that had not been provided for in the budgetary allocations.
- vii) From the available correspondences between Office of the President and the Judiciary, it was however noted that the suppliers had been identified by the Assumption of the Office of the President Committee established

under the Assumption of the Office of the President Act, 2012 and to which the Chief Registrar of the Judiciary is a member.

Table 22: Payments for Assumption of Office expenses from JTI Account

Vendor	Payment Mode	Amount
Johari Cleff Productions Limited	Swift Transfer	34,752,000.00
Xtreme Media Solutions Africa Limited	Swift Transfer	22,388,947.00
Wanderjoy Party land	Swift Transfer	2,811,840.00
Bullsons Agencies	Swift Transfer	1,815,400.00
Safana Holdings	Cheque No.607	683,820.00
Panesars Kenya Limited	Cheque No.606	174,000.00
Safana Holdings	Cheque No.609	150,336.00
M/S Stadia	Cheque No.608	40,000.00
		62,816,343.00

viii) During the period under review, it was also noted that JTI made the following payments on behalf of Judiciary headquarters, although the same was reimbursed on a later date.

Table 23: Payment for rent from JTI Account

Period	Item	Payee	Kshs
Feb 2013	Initial payment for Elgon Place	Sealink Holdings Ltd	43,250,082.00
Aug 2012	Judiciary Marches	Various courts and supplier	42,356,526.00
Feb 2013	Prefabricated court buildings	Economic Housing Group	26,469,832.00
Mar 2013	Furniture	Odds and Ends Ltd	4,835,000.00
			116,911,440.00

4 Recommendations

- 4.1 The Judicial Service Commission should limit its role to the mandate as provided for in the Constitution and the Judicial Service Act.
- 4.2 Judicial Service Commission should develop a human resource and training policies so as to lay down the relevant structures that ensure proper administration of the HR function.
- 4.3 The accounting officer should design adequate and proper internal control structures that ensure efficient and effective utilization of resources. The internal controls, which should enhance internal checks include:
- i) Maintain a cash book for all bank accounts and ensure that its regularly balanced and checked by a senior officer
 - ii) Ensure that bank reconciliation is done on a monthly basis so as to timely detect any errors or omissions that may have occurred in the course of carrying out the organization business.
 - iii) Ensure that payment vouchers are prepared, examined and approved and eventually authorized for all expenditures incurred at the Judiciary. The payment voucher should have proper supporting documents that include invoices, delivery notes, agreements, purchase orders, etc.
 - iv) On temporary imprest, officers going out on official duty should be paid on the strength of a duly approved imprest warrant (i.e. FO24), which is accounted for as an advance payment to staff. Upon return from official duty, the officer should adequately account for the advance and a payment voucher is prepared so as to expense the incurred expenditure. For instance, foreign travels should be supported by an expenditure schedule, copy of flight ticket, boarding passes and copy of passport showing exit and entry dates
 - v) Ensure that all expenditure are duly authorized and approved in accordance with the laid down government financial rules and regulations
 - vi) The Chief Registrar of Judiciary should ensure compliance with the Public Finance Management Act, the Public Procurement and Disposal Act,

Government Financial Regulations and Procedures, and all relevant laws and regulations at all times:

- 4.4 Judiciary should, as soon as practicable, create an executive committee that will prioritize activities at Judiciary. This Committee can comprise of the Chief Justice as the Chairman, the CRJ as the convener and departmental or directorate heads at all levels. The committee should ideally be composed of both the judicial officers and staff.

- 4.5 This committee would be charged with the responsibility of implementing the various projects envisaged by the Judiciary.

