



Approved  
for tabling  
SNA  
13/8/24

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – SECOND SESSION




THE NATIONAL ASSEMBLY

SPECIAL FUNDS ACCOUNTS COMMITTEE

REPORT

ON THE CONSIDERATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS FOR THE KENYA NATIONAL HIGHWAYS AUTHORITY ROAD MAINTENANCE LEVY FUND, KENYA RURAL ROADS AUTHORITY ROAD MAINTENANCE LEVY FUND, KENYA URBAN ROADS AUTHORITY ROAD MAINTENANCE LEVY FUND AND KENYA WILDLIFE SERVICES ROAD MAINTENANCE LEVY FUND FOR THE FINANCIAL YEARS 2020/2021 AND 2021/2022

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 14 AUG 2024	
DAY: WEDNESDAY	
TABLED BY:	HON. RAHMUN DAWODAMP VICE-CHAIR-SPECIAL FUNDS
CLERK AT THE TABLE:	ESTHER NGINYO

Directorate of Audit, Appropriations, and Other Select Committees  
National Assembly  
Parliament Buildings  
NAIROBI

August, 2024

**Table of Contents**

**1.0 PREFACE..... 5**

1.1 Establishment and Mandate of Special Funds Accounts Committee..... 5

1.1 Committee Membership..... 5

1.2 Committee Secretariat..... 6

**2.0 EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE ROAD MAINTENANCE LEVY FUND (KENYA NATIONAL HIGHWAY AUTHORITY) FOR THE FINANCIAL YEAR 2020/2021 AND 2021/2022 ..... 7**

2.1 Examination of the report of the Auditor-General for the Financial Year 2020/2021..... 7

2.2 Examination of the report of the Auditor-General for the Financial Year 2021/2022..... 9

**3.0 EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE ROAD LEVY FUND (KENYA RURAL ROADS AUTHORITY) FOR THE FINANCIAL YEAR 2020/2021 AND 2021/2022..... 27**

3.1 Examination of the report of the Auditor-General for the Financial Year 2020/2021..... 27

3.2 Examination of the report of the Auditor-General for the Financial Year 2021/2022..... 27

**4.0 EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF ROADS MAINTENANCE LEVY FUND (RMLF) – KENYA URBAN ROADS AUTHORITY FOR THE FINANCIAL YEARS 2020/2021 AND 2021/2022..... 30**

4.1 Examination of the report of the Auditor-General for the Financial Year 2020/2021..... 30

4.2 Examination of the report of the Auditor-General for the Financial Year 2021/2022..... 33

**5.0 EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE ON THE ROAD MAINTENANCE LEVY FUND (KENYA WILDLIFE SERVICE) FOR THE FINANCIAL YEAR 2020/2021 AND 2021/2022 ..... 40**

5.1 Examination of the report of the Auditor-General for the Financial Year 2020/2021..... 40

5.2 Examination of the report of the Auditor-General for the Financial Year 2021/2022..... 45

## **LIST OF ABBREVIATIONS AND ACRONYMS**

<b>APRP</b>	-	Annual Public Roads Program
<b>CoK</b>	-	Constitution of Kenya, 2010
<b>FY</b>	-	Financial Year
<b>KENHA</b>	-	Kenya National Highway Authority
<b>KERRA</b>	-	Kenya Rural Roads Authority
<b>KURA</b>	-	Kenya Urban Roads Authority
<b>KWS</b>	-	Kenya Wildlife Service
<b>MDAs</b>	-	Ministries, Departments and Agencies
<b>MOTIHUD</b>	-	Ministry of Transport Infrastructure Housing and Urban Development
<b>PFM</b>	-	Public Finance Management
<b>OAG</b>	-	Office of the Auditor-General
<b>PSASB</b>	-	Public Sector Accounting Standards Board
<b>RMLF</b>	-	Road Maintenance Levy Fund

## **CHAIRPERSON'S FOREWORD**

Hon. Speaker, on behalf of the Special Funds Accounts Committee and pursuant to Standing Order 199, it is my pleasant duty and honor to present to the House the report of the Committee on the audited financial statements for the Kenya National Highways Authority Road Maintenance Levy Fund, Kenya Rural Roads Authority Road Maintenance Levy Fund, Kenya Urban Roads Authority Road Maintenance Levy Fund And Kenya Wildlife Services Road Maintenance Levy Fund for 2020/2021 and 2021 /2022 financial years.

Oversight over national revenue and expenditure is amongst the roles of the National Assembly as stipulated under Article 95 (4) (c) of the Constitution of Kenya, 2010. Further, Article 226 provides that an Act of Parliament shall provide for the designation of an Accounting Officer in every public entity at the national level who is accountable to the National Assembly for its financial management. In addition, Article 229(8) mandates this House to debate and take appropriate action on audit reports from the Auditor-General.

In fulfilment of these constitutional provisions, the National Assembly established various Committees to examine reports of the Auditor-General to ascertain whether public funds are utilized in a lawful, authorized, effective, efficient, economical, and transparent manner. The Special Funds Accounts Committee, which was established in the Fifth Session of the Eleventh Parliament following the review of the National Assembly's Standing Orders, is one of these Committees.

The Committee received oral and written submissions from Eng. Kung'u Ndung'u, the Director General, Kenya National Highway Authority, Eng. Philemon Kandie, MBS, Director General, Kenya Rural Roads Authority, Eng. Silas Kinoti, Director General Kenya Urban Roads Authority and Dr. Erustus Kanga the Director General, Kenya Wild Service which formed the basis of its observations, findings, and recommendations.

Hon. Speaker, I wish to express appreciation to the Honourable Members of the Committee, the Office of the Speaker, and the Clerk of the National Assembly, the Parliamentary Liaison Offices of the Auditor-General and the National Treasury and the Committee Secretariat for facilitating the Committee in the production of this report.



Hon. A. RAHIM LAWOOD, VICE-CHAIR.  
f - HON. FATUMA ZAINAB MOHAMMED, M.P.  
CHAIRPERSON, SPECIAL FUNDS ACCOUNTS COMMITTEE

## 1.0 PREFACE

### 1.1 Establishment and Mandate of Special Funds Accounts Committee

1. The Special Funds Accounts Committee is one of the six Watchdog Committees of the National Assembly established under Standing Order 205. It is mandated to examine the reports of the Auditor General on the following:
  - i) *Funds established by statute or by subsidiary legislation, except Funds under Standing Order 205B (Decentralized Funds Accounts Committee)*
  - ii) *The Equalization Fund;*
  - iii) *The Equalization Fund Advisory Board;*
  - iv) *The Political Parties Fund; and*
  - v) *Other funds as may be communicated by the Honorable Speaker*

### 1.1 Committee Membership

2. The Committee comprises the following members:

S/ N	Name	Constituency	Party
1	Hon. Fatuma Zainab Mohammed, MP (Chairperson)	Migori (CWR)	Independent
2	Hon. Dawood Abdul Rahim, HSC, MP (Vice Chairperson)	North Imenti	Independent
3	Hon. Faith Wairimu Gitau, MP	Nyandarua (CWR)	UDA
4	Hon. Charles Ngusya Nguna	Mwingi West	Wiper
5	Hon. Dr. Christine Ombaka Oduor, MP	Siaya (CWR)	ODM
6	Hon. Erastus Kivasu Nzioka, MP	Mbooni	Wiper
7	Hon. Eve Akinyi Obara, MP	Kabondo Kasipul	ODM
8	Hon. Joseph Majimbo Kalasinga, MP	Kabuchai	FORD-K
9	Hon. Tom Mboya Odege, MP	Nyatike	ODM
10	Hon. Catherine Nakhabi Omanyoo, MP	Busia (CWR)	ODM
11	Hon. Cecilia Asinyen Ngigit, MP	Turkana (CWR)	UDA
12	Hon. Erick Wamumbi, MP	Mathira	UDA
13	Hon. Joseph Kimutai Cherorot, MP	Kipkelion East	UDA
14	Hon. Joshua Odongo Oron, MP	Kisumu Central	ODM
15	Hon. Paul Kibichi Biego, MP	Chesumei	UDA

## 1.2 Committee Secretariat

3. The Secretariat facilitating the Committee comprises the following staff:

S/N	NAME	DESIGNATION
1.	Mr. Erick Nyambati	Clerk Assistant I
2.	Ms. Comfort Achieng	Clerk Assistant III
3.	Mr. Nimrod Mate	Clerk Assistant III
4.	Mr. Robert Ngetich	Fiscal Analyst II
5.	Ms. Judith Kanyoko	Legal Counsel II
6.	Ms. Bevaline Mosoti	Research Officer III
7.	Mr. Derrick Kathurima	Media Relations Officer III
8.	Ms. Faith Muiya	Public Communications Officer III
9.	Mr. Peter Mutethia	Hansard Audio Officer III
10.	Mr. Joshua Lenambet	Serjeant At Arms

## **2.0 EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE ROAD MAINTENANCE LEVY FUND (KENYA NATIONAL HIGHWAY AUTHORITY) FOR THE FINANCIAL YEAR 2020/2021 AND 2021/2022**

4. Eng. Kung'u Ndung'u, the Director General, Kenya National Highway Authority appeared before the Committee on Wednesday 22<sup>nd</sup> November 2023 to adduce evidence on the audited financial statements for the Road Maintenance Levy Fund for the Financial Years 2020/2021 and 2021/2022. He was accompanied by:

1. Eng. Daniel S Cheroni - Director Maintenance
2. Mr. Stephen Ngang'a - Assistant Director Finance
3. Mr. Samuel Gatiba - Senior Accountant
4. Mr. James Bowan - RMLF (KENHA)

### **2.1 Examination of the report of the Auditor-General for the Financial Year 2020/2021**

#### **a. Unsupported Cash and Cash Equivalents**

5. The statement of financial position reflects cash and cash equivalents balance of Kshs 10,197,835,027 as disclosed in note 5 to the financial statements. The balance includes a call deposit balance of Kshs 981,255,555 for which a bank reconciliation statement was not provided for audit. In the circumstances, the accuracy and completeness of the call deposit balance of Kshs 981,255,555 could not be confirmed.

#### **Submissions by the Accounting Officer**

6. The Accounting officer submitted that the Authority places not-immediately-required funds in high yielding call deposits in line with the National Treasury Circular No. 4/2017. He stated that considering this guideline the Authority placed Kshs 1,500,000,000 in Co-operative Bank Call deposit account out of which Kshs 981,255,555 was from Fuel Levy Fund awaiting payment for certified work done by Contractors. He stated that A certificate of bank balance of Kshs 1,500,000,000 from the Co-operative Bank call deposit account as at 30<sup>th</sup> June 2021 was provided to the Auditor and attached.

#### **Observations of the Committee**

7. The Committee observed that:

- i. The Authority placed funds that were not-immediately-required in high yielding call deposits in line with the National Treasury Circular No. 4/2017.
- ii. A bank reconciliation statement for a call deposit balance of Kshs 981,255,555 was provided for audit verification.
- iii. The bank certificate for Co-operative Bank call-deposit account was provided and verified.
- iv. The matter is resolved.

#### **b. Variance in Development Project Expenses**

8. The statement of Financial Performance reflects development projects expenses amount of Kshs 2,074,878,851 as disclosed under note 3 to the financial statements. However, Kenya Roads Board records reflects Kshs 2,100,000,000 for the same resulting in an unexplained and unreconciled variance of Kshs 25,121,149. In the circumstances, the accuracy and completeness of development projects expenses amount of Kshs 2,074,878,851 could not be confirmed.

#### **Submissions by the Accounting Officer**

9. The Accounting officer submitted that as indicated in the schedule from the State Department of Infrastructure, the amount of Kshs 25,121,149 was not received by the Authority from Ministry of Transport Infrastructure Housing and Urban Development (MOTIHUD). He stated that the Authority could only account for the funds it received.

#### **Observations of the Committee**

10. The Committee observed that;
  - i. The Authority accounted for Kshs. 2,074,878,851 received from the Kenya Roads Board;
  - ii. The amount of Kshs 25,121,149 was not disbursed and received by the Authority from Ministry of Transport Infrastructure Housing and Urban Development (MOTIHUD).
  - iii. An unreconciled balance of Kshs. 25,121,149 for development projects expenses was explained; and
  - iv. The matter is unresolved.

#### **Recommendations of the Committee**

11. The Committee recommends that;
  - i. Within three months upon adoption of this report, the Ministry of Transport Infrastructure Housing and Urban Development (MOTIHUD) must disburse the amount of Kshs.25,121,149 owed to Kenya National Highways Authority (KENHA); and
  - ii. The Accounting Officer must ensure that the financial reports reflect a true and fair financial position of the entity in compliance with Regulation 23(2)(d) of the Public Finance Management (National Government) Regulations 2015.

#### **c. Emphasis of Matter**

12. As disclosed in note 13 to the financial statements, the Fund Financial statements were prepared using the 2020/2021 Financial year as the base year and therefore no comparative balances were reflected.

#### **Submissions by the Accounting Officer**

13. The Accounting officer submitted that the Fund's transactions were previously accounted for in the Authority's main financial statements. He stated that the communication to prepare separate financial statements was done on 14<sup>th</sup> April 2021 as per a letter from the Auditor - General.

### **Observations of the Committee**

14. The Committee observed that;

- i. The communication requiring the Authority to prepare separate financial statements was done on 14<sup>th</sup> April 2021 and the same was verified by the Auditor General.
- ii. The matter is resolved.

### **Other Matter**

#### **d. Budgetary control and Performance**

15. The statement of comparison of budget and actual amounts reflects actual expenditure on Kshs 21,686,652,587 against a budgeted amount of Kshs 29,039,333,029 resulting in under-absorption of Kshs 7,352,679,442 or 25% of the budget. The under absorption affected the planned activities and may have impacted negatively on service delivery to the public.

### **Submissions by the Accounting Officer**

16. The Accounting officer agreed with the audit observation that the statement of comparison of budget and actual amounts reflected actual expenditure of Kshs 21,686,652,587 against a budgeted amount of Kshs 29,039,333,029 resulting in under-absorption of Kshs 7,352,679,442 or 25% of the budget.

17. He further submitted that this resulted from delayed commencement of some maintenance projects resulting from contractors' delayed submission of Performance Bonds and All Risk Insurance policies. He however, noted that most of the contractors who delayed in commencing works expedited maintenance works during the financial year with the intention of recovering lost time. He explained that the underspent amount of Kshs. 7,352,679,442 as indicated above was fully absorbed by the respective projects within the 1st quarter of the FY 2021/2022.

### **Observations of the Committee**

18. The Committee observed that;

- i. The Authority's actual expenditure was Kshs 21,686,652,587 compared to the budgeted amount of Kshs 29,039,333,029 resulting in an under-absorption of Kshs 7,352,679,442 or 25% of the budget.
- ii. The under-absorption was occasioned by delayed commencement of some maintenance projects which resulted from contractors' delayed submission of Performance Bonds and all Risk Insurance policies. The Authority did not adduce documentary evidence of the intended absorption of the Kshs. 7,352,679,442
- iii. The matter is unresolved.

### **Recommendation of the Committee**

Within three months upon adoption of this report, the Accounting Officer must provide supporting information on the Kshs 7,352,679,442 or 25% to the Auditor General for audit verification.

## **2.2 Examination of the report of the Auditor-General for the Financial Year 2021/2022**

**a. Unreconciled Difference between Unpaid Projects Amounts and Cash and Cash Equivalents Balance**

19. A review of the Annual Public Roads Program (APRP) indicates that the Fund had an approved budget of Kshs.28,266,494,344 covering a total of 462 road projects for the year ended 30 June, 2022. The budget was fully funded by Kenya Roads Board during the year. Further review indicates that payments totalling to Kshs.25,408,126,383 were made for work done leaving an un-paid balance of Kshs.2,858,367,961 as at 30 June, 2022.
20. However, the statement of financial position reflects cash and cash equivalents balance of Kshs.1,707,746,685 which is less than the unpaid balance of Kshs.2,858,367,961. The difference of Kshs.1,150,621,276 had not been reconciled. In the circumstances, the accuracy of the financial statements could not be confirmed.

**Submissions by the Accounting Officer**

21. The Accounting officer agreed with the audit observation that the cash balance in the RMLF bank account as at 30<sup>th</sup> June 2022 was Kshs. 1,707,746,685 whereas the unspent budget at the same time was Kshs. 2,858,367,961.
22. He submitted that the cash at bank amounting to Kshs. 1,707,746,685 was for receipts net of payments whereas the carry over balance of Kshs. 2,858,367,961 was the approved budgeted resources for road maintenance works that had not been absorbed either through payment or accrual of road maintenance expenses as at 30<sup>th</sup> June 2022.
23. He further submitted that the Authority accrues its expenses and recognizes them in its books of accounts as expenditures even if not yet paid as opposed to cash accounting which only recognizes expenses once paid. In this regard, unabsorbed resources would not equal the cash in the bank.

**Observations of the Committee**

24. The Committee observed that:
  - i. Cash at the bank amounting to Kshs.1,707,746,685 was for receipts net of payments whereas the carry over balance of Kshs.2,858,367,961 was the approved budgeted resources for road maintenance works that had not been absorbed as at 30<sup>th</sup> June 2022.
  - ii. The Authority uses the accrual reporting framework where it accrues its expenses and recognizes them in its books of accounts as expenditures even if not yet paid.
  - iii. The matter is resolved.

**b. Road Maintenance Levy Fund**

25. The statement of financial performance and as disclosed in note 1 to financial statements reflects funds received from Kenya Roads Board (KRB) amounting to Kshs 32,373,684,084. However, records maintained by Kenya Roads Boards reflects disbursements totalling to Kshs 44,342,887,917 resulting to a variance of Kshs 11,969,203,833 which was not reconciled or explained. In the circumstances, the accuracy and completeness of Road Maintenance Levy Fund amount of Kshs 32,373,684,084 could not be confirmed.

### **Submissions by the Accounting Officer**

26. The Accounting officer submitted that agreed with the audit observation that the statement of financial performance and as disclosed in Note 1 to the financial statements, reflected funds received from Kenya Roads Board (KRB) amounting to Kshs.32,373,684,084 (which included receivable of Kshs.11,865,854,651 as at 30<sup>th</sup> June 2022) as opposed to KRB records which indicated a total disbursement of Kshs. 44,342,887,917 which as per their observation, the above included a surplus of Kshs. 7,492,857,000 and a payable of Kshs.10,257,336,917.
27. He further submitted that Kshs. 32,373,684,084, reflected in the Authority's books, was arrived at after due consideration of reliable documents from the Kenya Roads Board in line with Accounting for Government Grants as contained in International Public Sector Accounting Standards.
28. He further explained that the Authority is not aware of the alleged Kshs. 44,342,887,917 recorded in the Board's books neither was the Kshs. 44,342,887,917 disbursed to the Authority in the financial year ended 30<sup>th</sup> June 2022.
29. He clarified that the Authority received a total of Kshs. 32,373,684,084 from KRB through the State Department for Infrastructure being RMLF for FY 2021/2022.

### **Observations of the Committee**

30. The Committee observed that:
  - i. Management supported the receipts of amounts totaling Kshs.32,373,684,084.
  - ii. The Kenya Roads Board records indicated that the Board disbursed Kshs. 44,342,887,917 disbursed to the Authority while KENHA indicated that it received a total of Kshs. 32,373,684,084 from Kenya Roads Board resulting in an unreconciled of a variance of Kshs.11,969,203,833 and
  - iii. The matter is unresolved.

### **Recommendations of the Committee**

31. The Committee recommends that;  
within three months of the adoption of this report, the Accounting Officer to reconcile the variance of Kshs.11,969,203,833 with Kenya Roads Board for disbursed funds and submit supporting documentation to the Auditor -General for audit verification;

#### **c. Unauthorized Retention of Receipts**

32. The statement of financial performance reflects finance income of Kshs.149,517,064 being interest earned from Road Maintenance Levy Fund (RMLF) funds and other income of Kshs.9,177,581 in respect to liquidated damages charged to various contractors both totalling to Kshs.158,694,645. However, the amounts were not appropriated in the Authority's budget which is an indication that the revenue should have been surrendered to the National Treasury. No evidence was provided to indicate that the amount was surrendered to the National Treasury.

33. In the circumstances, the revenue amount of Kshs.158,694,645 was irregularly retained and expended by the Authority.

#### **Submissions by the Accounting Officer**

34. The Accounting officer refuted the audit observation that interest income and liquidated damages both totalling to Kshs. 158,694,645 was not appropriated in the Authority's budget for FY 2021/2022. He noted that the interest income and liquidated damages were included in the Operations and Administration Budget for FY 2021/2022 which had provisions of Kshs. 870,000,000 and Kshs. 50,000,000 for Interest income for all bank accounts and other incomes which include liquidated damages for all projects.
35. He further submitted that the Operations & Administration Budget FY 2021/2022 was approved by the Authority's Board of Directors on 28<sup>th</sup> January 2021 and duly uploaded onto the General Inspection Management Information System (GIMIS) platform on 17<sup>th</sup> February 2021.
36. He also stated that a copy of the detailed Operations & Administration Budget for FY 2021/2022 that was approved by the Board, extracts of the minutes of the 138<sup>th</sup> Board meeting held on 28<sup>th</sup> January 2021 that approved the Operations & Administration Budget and GIMIS print out of the uploaded signed budget for FY 2021/2022 were approved for verification.

#### **Observations of the Committee**

37. The Committee observed that;
- i. The interest income and liquidated damages were included in the Operations and Administration Budget for FY 2021/2022 which had provisions for Interest income for all bank accounts and other incomes which include liquidated damages for all projects;
  - ii. The authority provided the approved budget incorporating the expected interest for the year; and
  - iii. The matter is resolved.

#### **Report on Lawfulness and Effectiveness in use of Public Resources**

##### **d. Anomalies noted during Projects Inspection**

38. Physical verification carried out in the month of February 2023 revealed delayed works on various projects in different regions as highlighted below:

##### **1.1 Nakuru Region**

###### **i. Performance Based Contract for Maintenance of Narok –Ngoswani (B131) Road**

39. Performance Based Contract for Maintenance of Narok–Ngoswani (B131) road was awarded to a contractor vide contract No.KeNHA/RD/RA&CM/3360/2021 at a contract sum of Kshs.310,166,470. The works were to commence on 16<sup>th</sup> August 2021 for a period of 36 months. The expected date of completion is 15<sup>th</sup> August 2024. Progress status report as at 30 June, 2022 indicated 5.85% physical progress versus 31% elapsed time. Physical inspection conducted in February 2023 indicated physical progress of 30.04% against 50.04% elapsed time an indication that the project was behind schedule.

40. A review of correspondence indicates that the contractor has failed to comply with contract conditions where he was to cover excavated potholes at Km 7+600, Km 12+800, Km 10+800 and Km 16+200 within 48 hours as specified in the contract conditions. There was however no evidence of damages deductions from the contractor despite express authority vide Section 47.1 (b) of the conditions of the contract specifying that Kshs.50,000 per month per pothole will be deducted from the contractor as damages for not attending to potholes within 48 hours of excavation.

41. It was further noted that the contractor has been given three notices on slow progress which is an indication of no improvement by the contractor. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

#### **Submissions by the Accounting Officer**

42. The Accounting officer agreed with the Audit observation that at the time of physical inspection in February 2023, physical progress was at 30.04% against time elapsed of 50.04% indicating that the project was behind schedule.

43. He submitted that there was significant improvement in physical progress noted and as at 31st March, 2023, progress stood at 36% compared to 5.58% as at the date when the last notice of slow progress was issued.

44. He also submitted that it was anticipated that if the contractor continued with the same pace of work, they would not be able to complete the works on time as provided for in the works contract.

45. He further submitted that the potholes were rectified by the contractor and the deductions for the initial non-compliance amounting to Kshs. 200,000 in line with clause 47.1 (b) of the Contract and was applied in Interim Payments Certificate No. 4. as liquidated damages.

#### **Observations of the Committee**

46. The Committee observed that:

- i. The latest project briefs indicated that the contractor had made noticeable progress in implementation of the works;
- ii. The potholes were rectified by the Contractor and the deductions for the initial non-compliance) of the Contract was applied as liquidated damages; and
- iii. The matter is resolved.

#### **ii) Periodic Maintenance of Njoro- Mau Summit (B129)**

47. Periodic Maintenance of Njoro-Mau Summit (B129) was awarded vide contract No.KeNHA/RD/RA&CM/3396/2021. The works were to commence on 26<sup>th</sup> August 2021 for a period of eighteen (18) months with completion date of 25 February, 2023. Physical verification in February, 2023 revealed 80.20% physical progress against 95.45% elapsed time an indication that the project was behind schedule.
48. The following observations were also made; The contractor had not done surface dressing works on 7 km and river training works. The road shoulders in Keringet area were being swept away and had not been repaired though work was paid for and putting to question the quality of shoulder works. In the circumstances, the project may not have been executed as scheduled which impacted negatively on realization of value for money by the public.

#### **Submissions by the Accounting Officer**

49. The Accounting officer agreed with the Audit observations that the contractor, as at the time of physical verification audit, had not done surface dressing works on 7 km and river training works. He further agreed that the road shoulders in Keringet area were being swept away and had not been repaired though works executed had already been paid for.
50. He submitted that the contractor substantially completed the works on 24<sup>th</sup> February 2023 including the 7km of surface dressing that was outstanding. The contractor requested the project inspection, and the process was done to all projects before the project take over. Further an Inspection & Acceptance Committee has been constituted to carry out the exercise and prepared a report for Management consideration. Minutes of the Inspection and Acceptance Committee for Periodic Maintenance of Njoro-Mau Summit (B129) were provided for verification.

#### **Observations of the Committee**

51. The Committee observed that;
- i. As per the Authority's response, the contractor has substantially completed the project works including the 7km of surface dressing that was outstanding, and inspection done; and
  - ii. The matter is resolved.

#### **1.2 Garissa Region**

##### **i. Performance Based Contract for Maintenance of Junction (B89) Madogo (B89)-Modika (A3) Road**

52. The contract was awarded to a contractor on 30 April 2020 at a contract sum of Kshs.119,420,356.86 for a period of 24 months. The contract was to be completed on 27 November 2022. Cumulative amount certified as at the time of audit in February 2023 was Kshs.46,686,506.98.
53. The following were noted during physical inspection.
- (i) There were no signs that the contractor was on site,
  - (ii) There were blocked culverts especially in Garissa Town while works was still incomplete.

- (iii) Drainage have dumped garbage and overgrown vegetations,
- (iv) Most road signs had been vandalized,
- (v) De-siltation of drainage and culverts as detailed on the contract was not done in Garissa Town,
- (vi) Between the main bridge separating Garissa town towards Madogo, there are conspicuous and strong erosion of the road side especially the road shoulders and the road reserves have undesirable overgrown vegetation which were supposed to have been cleared as per the contract.

54. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

#### **Submissions by the Accounting Officer**

55. The Accounting Officer agreed with the Audit observations on the items noted during physical inspection. He provided that the contract, KeNHA/RD/RA&CM/3009/2020 commenced works on 28th May 2020 and ended 27th May 2022. He explained that the contract performed well initially but faced various challenges during the implementation of the project.
56. He submitted that several initiatives by the Project Team to have the Contractor perform did not bear fruit. Consequently, the contract was terminated on 25th August 2022 and the contractor was charged full liquidated damages of Kshs. 5,971,017.84 and the balance of the contract sum of Kshs. 47,334,974.96 went to the procurement of a new contract.
57. He further submitted that a new contract No. KeNHA/RD/RA&CM/3714/2022 (Lilaaf Construction Co. Ltd.) was procured and has addressed the outstanding project issues. Extracts of the contract No. KeNHA/RD/RA&CM/3714/2022 was attached.

#### **Observations of the Committee**

58. The Committee observed that;
- i. The Contract was terminated the Contractor was charged full liquidated damages of Kshs. 5,971,017.84 and the balance of the contract sum of Kshs. 47,334,974.96 went to the procurement of a new contract;
  - ii. A new contractor was put in place and substantial works had been done; and
  - iii. The matter is resolved.

### **1.3 Central Region**

#### **Performance Based Contract for Maintenance of Junction B21 Nyeri-Othaya-**

59. The contract was awarded to a contractor on 29 September 2020 at a contract sum of Kshs.177,595,014 for a period of 36 months. The completion date for instructed works was 16 November, 2021. The contractor's all risk expiry date was expected on 22 January, 2024. The amount certified for payment as at 31 January, 2023 was Kshs.128,597,863.32.
60. As at the time of audit in February 2023, it was noted that potholes were observed on shoulders of some sections of the road, damaged guardrails were conspicuously seen at KM 0+000, litter along some sections of road drainage channels especially at around 33 Km, there was vegetation at around 41Km that had grown beyond the Performance Based Contract

(PBC) height requirements and some asphalt applied on some road pavement section was failing.

61. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

#### **Submissions by the Accounting Officer**

62. The Accounting Officer agreed with the Audit observations and submitted that the Contractor's All Risk Insurance was necessary throughout the duration of the contract even after completion of instructed works. The contractor was advised to extend the validity of the All-Risk Insurance Cover prior to the expiry of the running insurance cover which was to expire on 22nd January 2024.
63. He further submitted that the balance of the contract sum amounting to Kshs. 48,997,151 was for PBC works up to 31st January 2024. In line with the PBC contractual provisions and given that this was a very aged pavement the contractor had patched the noted and emerging potholes as well as the damaged guardrails which was a continuous activity during the duration of the contract in the PBC context.
64. He also submitted that in the same PBC context, the littering cited at km 33 and vegetation at km 41 was addressed and Penalties of Kshs. 675,405.87 was levied for the noted non-compliance as provided for in the contract. Extracts of Interim Payments Certificates with deducted amounts were attached Appendix KENHA/SFAC/FY22-23/8. Further the patchwork to maintain motorability on the aged pavement was a continuous process and where non-conformity was cited penalties have been instituted.

#### **Observations of the Committee**

65. The Committee observed that;
- i. The contractor has patched potholes, littering cited at km 33 and vegetation at km 41 was addressed, and penalties of Kshs. 675,405.87 were levied for the noted non-compliance as provided for in the contract.
  - ii. The Authority provided evidence of recovery through deductions made on the contractor's measurement sheets.
  - iii. The matter is resolved.

#### **ii. Performance Based Contract for Maintenance of JN B23/27 Othaya –JN A 2/B 27 Karatina (B27)**

66. Contract No. KeNHA/RD/RA&CM/2951/2020 was awarded to a contractor on 10 March, 2020 at a contract sum of Kshs.49,460,633.20 for a period of 36 Months. Contractor's all risk insurance policies expiry date is expected on 18 June, 2023. Amount certified for payment as at 31 January, 2023 was Kshs.44,418,053.64.
67. Physical verification in February 2023, revealed litter and silt in culverts at Karatina town. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

### **Submissions by the Accounting Officer**

68. The Accounting Officer agreed with the audit observation that the Contractor's all risk cover was expiring on 18 June, 2023 and that there was litter and silt in culverts within Karatina town.
69. He submitted that the culverts were cleared of all blockages and the project team had enhanced supervision to ensure that the contractor continuously cleared any culvert blockages that may arise within the current rainy season. He also noted regarding the contractors All Risk insurance cover, Management was confident that the works would be completed prior to the expiry of the insurance cover on 18<sup>th</sup> June 2023. Attached were copies of photographs showing the latest position on the ground.

### **Observations of the Committee**

70. The Committee observed that;
  - i. The culverts were cleared of all blockages and management has enhanced supervision to ensure that the contractor continuously cleared any culvert blockages that may arise within the current rainy season.
  - ii. Management indicated that works would be completed prior to the expiry of the insurance cover.
  - iii. The matter is resolved.

### **iii. Performance based Contract for Maintenance of JN A2 Karatina - Kagumo-Kutus (B27) Road\**

71. The contract was awarded on 29 September 2020 at a contract sum of Kshs.374,379,713. The date of order to commence was 4<sup>th</sup> December 2020 with a completion period of 36 months. The revised contract sum was Kshs.464,340,178.70 surpassing the original contract sum by Kshs.89,960,465.70 or 24%. The amount certified as at the time of progress report in the month of January 2023 was Kshs.341,534,226.96. The expected completion date is 17<sup>th</sup> December 2023. The Management did not provide reasons for revising the contract price upwards. Further, in Kagumo town, some access culverts had overgrown vegetation that could not allow free surface flow of rainwater.
72. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

### **Submissions by the Accounting Officer**

73. The Accounting officer submitted that the upward contract revision arose from the need to address the erratic failure witnessed on the road which had threatened to cut off the road. The variation report detailing the noted failures and intervention measures required was approved by the Employer as per the copy of variation order.
74. He also submitted that the issue of overgrown grass had since been addressed by the Contractor and additional instructions to the Contractor to ensure that he maintained grass height to the required standards as provided in the contract had been conveyed. He further

noted that resulting from the above instructions, the grass within Kagumo town on the two culvert locations arising from mudslide had since been controlled and the resulting mud is continuously carted away as and when it arises.

### **Observations of the Committee**

75. The Committee observed that:

- (i) Management provided supporting documents on the approval of contract sum of Kshs. 374,379,713 thus a variation of Kshs. 89,960,465.70 or 24% for verification;
- (ii) The grass has been maintained to the required standard the Contractor and additional instructions given to the Contractor to ensure that he maintained grass height to the required standards; and
- (iii) The matter is resolved.

### **1.4 Isiolo Region**

#### **i. Periodic Maintenance of Ruiru – Isiolo**

76. The tender was awarded at a contract amount of Kshs.682,103,815. The contract commenced on 14 December 2020 and the initial date for completion was 14 December 2022. However, at the time of audit inspection, the project was lagging schedule with the progress of work at 82.6 percent against over 100%-time lapse. According to a letter dated 14 December 2022 by the Regional Director to the contractor, it was noted that on some road pavements, the contractor had used AC material that had failed to meet the minimum laboratory requirements for AC Type 1. The affected sections were Km 13+300 right hand side and Km 15+220 to km 15+770.
77. It was also noted that the above-mentioned irregularity could negatively affect the quality of the affected sections of the road. Several road signage's had been vandalized and the contractor had not been issued with instructions to correct the works. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

### **Submissions by the Accounting Officer**

78. The Accounting officer submitted that the contractor requested for extension of time due to supply delays. He indicated that the merit of the request was evaluated and granted.
79. He further that the contractor cited three weeks break to allow workers to vote in August 2022 General Election as other causes of delays for which he was entitled to time extension.
80. He also submitted that the AC Type 1 used by the contractor failed marginally in stability, but the rest of the parameters met the required specification. The sampling and testing of AC was done after laying, the matter was brought up to the attention of the contractor for information and product adjustment. Subsequently the contractor was informed that affected sections will be observed during the one-year Defects Liability Period (DLP). So far, the section has been performing well. Further a corrective order had since been issued to the contractor for their action.

### **Observations of the Committee**

81. The Committee observed that:

- i. The contractor, used AC material on some road pavements that had failed to meet the minimum laboratory requirements for AC Type 1.
- ii. The Authority had provided evidence of issuance of a correction order.
- iii. The AC Type 1 used by the Contractor failed marginally in stability,
- iv. The suitability of the material is still awaiting the end of the Defects Liability Period to be confirmed.
- v. The matter is unresolved.

### **Recommendations of the Committee**

82. The Committee recommends that

- i. Within three months upon adoption of this report the Accounting Officer must provide a report on the corrective order issued to the Contractor regarding AC Type 1 used to the Auditor- General for verification.
- ii. The Office of the Auditor General to confirm the status of the correction defects in the next audit period

### **1.5 Machakos Region**

#### **i. Performance Based Contract for Maintenance of Machakos -Kangundo (B 105) Road.**

83. The contract was awarded at a contract sum of Kshs.34,915,829 for a period of 24 months commencing on 27 July, 2021 with completion date of 26 July, 2023. The amount certified was Kshs.15,257,277 as at the time of inspection in February, 2023. However, it was noted that the contractor had failed to meet the expected service levels as per the contract requirements. Both the inner and the outer vegetation had overgrown beyond the required service level between 150mm and 300mm respectively along the full road chainage.
84. The drainage channels were clogged by overgrown grass and silt. At Km 16, two guardrails that had been detached by a road accident had remained unrepaired and the contractor was not on site. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money to the public.

### **Submissions by the Accounting Officer**

85. The Accounting officer submitted that the non-compliances noted were attributed to Contractor's poor performance. He indicated that the Resident Engineer had invited the Contractor for a management meeting on 14th February 2023. A copy of minutes were provided for verification, which highlighted the poor performance and the need to rectify all the shortcomings.
86. He also submitted that the Contractor was on site and has since attended to all the issues raised under close supervision of the Resident Engineer's Team. copies of progress photos were provided for verification. Further the necessary penalties in terms of deduction would be effected when the Contractor submits his next Interim Payment Certificate.

### **Observations of the Committee**

87. The Committee observed that;

- i. The contractor has since attended to all the issues raised by the Auditor General under the supervision of the Resident Engineer's Team.
- ii. The matter is resolved.

## 1.6 Eldoret Region

### i. Stage Improvement of Nyaru-Iten

88. Stage improvement of Nyaru-Iten works were awarded vide contract No. KeNHA/RD/M/2032/2016 at an original contract sum of Kshs.2,418,819,638.75 to commence on 14 November, 2016 for a period of 30 Months with completion date of 13 May, 2019. Later, the works were varied by Kshs.526,630,775.47 to Kshs.2,945,450,414.22 to be completed on 31 March, 2023. As at the time of verification in the month of February, 2023, the certified works were Kshs.2,417,805,863 or 78.5% versus 98.56% elapsed time.
89. The project has pending bills totalling to Ksh.525,893,208 as at 30 June, 2022 with a risk of incurring additional interest costs and penalties due to delayed payments. The Resident Engineer vide letter dated 10 June, 2022 recommended taking over of works as the contractor had substantially completed the works save for nominal non-permanent works. This would have avoided extension of time as the remaining works would have been done during the defect's liability period. However, instead the contractor was given an extension of time to complete the works by 31 March, 2023. Delay in paying interim payment certificates has led to excess costs to the project due to interests and taxes charged as shown below:

Description	Kshs
Variation of Price	203,577,680
Add 16% VAT	32,572,429
<b>Total</b>	<b>236,150,109</b>
<b>Interest on Delayed Payments</b>	<b>12,034,734</b>

90. The project brief as at 14 February, 2023 shows that the total certified works done inclusive of variation in price and value added tax was Kshs.2,417,805,863 (IPC 1-16). It also shows that interest on delayed payments at Interim Payments Certificate (IPC) 10 of Kshs.12,034,734. However, addition of interim payment certificates as given in the schedule excluding IPC 1 (Advance Payment) and Interim Payment Certificate 10 (Interest on delayed payments) shows that the total certified works is Kshs.2,458,504,065 (83.5%) a difference of Kshs.40,698,202. The workings are shown in the below:

IPC No.	IPC Amount (Kshs)
IPC 2	119,949,434.21
IPC 3	120,920,581.41
IPC 4	125,539,428.65
IPC 5	121,771,792.76
IPC 6	121,312,703.88

IPC 7	242,265,757.40
IPC 8	266,581,167.84
IPC 9	173,548,004.26
IPC 11	192,805,947.52
IPC 12	252,221,796.52
IPC 13	160,762,791.08
IPC 14	205,361,507.00
IPC 15	159,462,884.64
IPC 16	196,000,267.97
Total	2,458,504,065.14
Certified Works	2,417,805,863.00
Difference	40,698,202.14

#### **Submissions by the Accounting Officer**

91. The Accounting officer submitted that the Stage Improvement of Nyaru – Iten was not a Fuel Levy Maintenance Fund funded project but funded by the Exchequer and therefore should ideally not have appeared in Financial Statements for the Fund.
92. However, the Resident Engineer requested the Engineer vide letter Ref. KeNHA/06. A/R3/C53/2032/158 dated 10th June 2022 to constitute an inspection and acceptance committee to inspect the works with the purpose of taking them over. It was however not possible to form a committee to take over the works because there were still some outstanding works as communicated by the RE on 23rd June, 2022.
93. The contractor submitted an Extension of Time (EOT) request which was currently under review at the time of audit. They acknowledged that there was an error of oversight while preparing the project brief as at 14th February, 2023 where the total value of certified works was left understated as KES 2,417,805,863.40. He also noted that it had since been corrected and the correct value of total certified works was KES 2,458,504,065.14.
94. The Accounting Officer also submitted that the project had pending bills amounting to Kshs 525,893,208 as at 30 June 2022. This situation was because of the following:
- a) Inadequate Exchequer budgetary provisions in the current as well as prior financial years of project implementation.
  - b) Delayed receipt of Budgeted Exchequer funds by the Authority in the current as well as prior financial years.

95. He further indicated that in order to ensure that the pending bills were settled, the Authority, in liaison with the parent ministry and the National Treasury would endeavor to allocate sufficient budgets in subsequent financial years.

#### **Observations of the Committee**

- (i) The Committee observed that the project was funded by the National Government development budget not by the Road Maintenance Levy Fund. It was erroneously captured in the Financial Statements; and
- (ii) The matter is unresolved

#### **Recommendations of the Committee**

96. The Committee recommends that; within three months upon adoption of this report, the Accounting Officer must pass a journal entry and make an adjustment in the financial statements to correct the error and submit them to the auditor General for audit verification

#### **ii. Performance Based contract for the Maintenance of JN A8 Eldoret-Kapsabet Contract Sum Kshs.337,252,990.41**

97. Review of documents provided for audit revealed that under summary of the bill of quantities, bill No.1, item 01-08-026A for payment of residential engineer's miscellaneous account reflected an amount of Kshs.1,922,337.50 which differed with the detailed analysis amount of Kshs.1,057,507.50 resulting to an unexplained variance of Kshs.864,830. Similarly, bill No. 25, item no.25-56-003 for cross cutting issues reflected Kshs.3,513,001 and the attached appendix indicated an amount of Kshs.2,953,000 resulting to a variance of Kshs.560,001.

98. Physical verification carried out in February 2023 revealed a vandalized signposts at Km 24+200, Km 26+200, Km 27+300 and Km 32, vandalized culvert and drainage works, waste along the drainages and at Km 25 and Km 35+10 the drainage was broken and not properly aligned, the guardrail at Km 31+200 is broken and the shoulders had been swept away at Km 21+300, Km 28 and Km 30-35+10.

#### **Submissions by the Accounting Officer**

99. The Accounting Officer submitted that items 01-80-026A and 25-56-003 in the Bill of Quantities were appraised to cater for critical work items under the contract. He also submitted that vandalism of road furniture and dumping of waste onto the drains had been a challenge along the Eldoret-Kapsabet road. He noted that the regional office planned to carry out sensitization forums at market centers along this road aimed at winning support among residents against this vice.

100. He further submitted that the shoulder reinstatement to bituminous standards was done under this contract between Km 10+100 – 18+600 & Km 25+900 – 27+340. He added that they were packaging comprehensive shoulder reinstatement works in the next contract to be procured in FY 2023/2024.

### Observations of the Committee

101. The Committee observed that;
- i. The matter of the variances of Kshs. 864,830 and Kshs. 560,001, in the summaries of bills of quantities was reconciled and therefore resolved.
  - ii. The matter of vandalism and waste dumping was not resolved.
  - iii. The management response did not correspond with the Auditor General's observation on the issue of shoulder reinstatement.
  - iv. The matter is unresolved

### Recommendations of the Committee

102. The Committee recommends that;
- i. Within three months of the adoption of this report the Accounting Officer must provide a report and supporting documents for the shoulder reinstatement project for both Km 21+300, Km 28 and Km 30-35+1 and Km 10+100 – 18+600 & Km 25+900 – 27+340 to the Auditor General for audit verification.
  - ii. The Accounting Officer must consider constructing guard rails with concrete and not metal bars to mitigate the issue of vandalism.

### 1.7 Kakamega Region

#### i. Performance Based contract for the Maintenance of Busia-Malaba (B13) Road Contract Sum Kshs.270,869,947.80

103. Verification of the project revealed the following:
- a. Side drains were filled with waste and sewer at 0+000 to 0+200BS,
  - b. Emerging pothole and surface wearing off at Km 9+500 and Km 23+600,
  - c. Delay in commencement of works for surface dressing chippings yet the expected progress as per Plan of Work was 62.5%
  - d. Instruction 009 for installation of bumps and installation of rumble strips recorded progress of work 100% and expected progress as per Plan of Work (POW) was 100% however, no rumble strips had been installed as at the time of audit.
104. Further, the summary of Bill of Quantities, bill No.1 for the item 01-50-020 for purchase of office equipment at a total cost of Kshs.1,500,000 was not supported by a detailed appendix. Consequently, it was not possible to confirm which office equipment were to be purchased for this project.

105. In addition, under residents' engineer's office miscellaneous expenses, the following items were purchased and paid vide invoice order No.15 dated 15 February, 2022,;

Description	Quantity	Rate (Kshs)	Amount Kshs.
4 standard Laptops of minimum RAM 8GB and 1 TB ROM. core i7 preferably HP make or LENOVO	2	70,000	140,000
4 HP desktop computers of minimum RAM 8GB and 1tb ROM core i7	5	100,000	500,000
<b>Total</b>			<b>640,000</b>

106. Although the Bill of Quantities indicated 4 HP desktop computers, actual number purchased were 5 as highlighted above. No explanation was provided for this variation. Further, these assets were not captured in the fixed asset register.

**Submissions by the Accounting Officer**

107. The Accounting officer submitted as follows :

- (i) The side drains were filled with waste and sewer at 0+000 to 0+200BS,
- (ii) There were emerging pothole and surface wearing off at Km 9+500 and Km 23+600,
- (iii) There was delay in commencement of works for surface dressing chippings yet the expected progress as per Plan of Work was 62.5%
- (iv) Instruction 009 for installation of bumps and installation of rumble strips recorded progress of work at 100%.

108. He also submitted that:

- (i) The Region is in consultation with the relevant authorities in Busia County Government to address the challenge of discharge of sewage into the open drains by the locals at km 0+000 to 0+200 Left Hand Side. The blocked side drains were however noted during the monthly formal inspection No. 12 of January 2023 and communicated to the contractor vide letter Ref: KeNHA/R2/06.A/B13/3425/VOL.1/061 dated 6th February, 2023. Payment reductions have been made for the non-complying side drains section pursuant to Clause 2.6.1 of the Performance specifications.
- (v) The emerging potholes at km9+500 were noted during the monthly formal inspection No. 12 of January 2023 and communicated to the Contractor vide letter Ref: KeNHA/R2/06.A/B13/3425/VOL.1/061 dated 6th February, 2023. Payment reductions have since been made for the non-complying section pursuant to Clause 2.6.1 of the Performance specifications. A copy of the minutes of the Formal inspection and correspondences are attached
- (vi) Bill No. 1 item 01-50-020 (purchase of office equipment) is a Prime Cost (PC) sum. Usually for Prime Cost sums, prior approval to expend the Bill item is usually sought from the Engineer with the details of what is to be purchased well described. As at the time of audit the amount had not been expended hence no detailed appendix could be availed to the auditors.

109. He further submitted that there was a typo error in Appendix B, item No. 10. where what was in the description column was contradicting what was in the quantity column. He explained that the description column quoted 4 items to be purchased while the quantity column quoted 5 items. The purchase was done based on the quantity specified in the Bill of Quantities and not the description as clearly highlighted in the Resident Engineer's Site Instruction No. 4.

**Observations of the Committee**

110. The Committee observed that;

- i. The contractor was not fully executing the works by not removing litter, not diverting sewer in drainage channels, not patching emerging potholes on the road and the works for surface dressing chippings had not commenced.
- ii. The Bill of Quantities details of office equipment to be acquired have since been provided.
- iii. The contractor has since resolved the issues mentioned on the road drainage.
- iv. No evidence of consultation with the relevant authorities or stakeholders to address the challenge of discharge of sewage into the open drains by the locals had been provided.
- v. The matter remained unresolved.

### **Recommendations of the Committee**

111. The Committee recommends that:

- i. Within six months upon adoption of this report, the Authority must commence repairs of the broken sewer lines from the payment reduction for the non-complying side drains.
- ii. The Accounting Officer must ensure that all contracts entered into by the Authority are lawful and complied with in compliance with section 68(2)d of the PFM Act.

#### **ii. Delayed Works and Roads with Excess Length**

112. A review of project status for contracts totaling to Kshs.14,452,666,851.45 with a length of 4,344.99 km revealed that 2,733.02 km had been done while 1,612 have delayed. Further, fifteen (15) roads with contracts totaling to Kshs.7,200,037,190 did more kilometers compared to what had been authorized in the procurement documents by 362.14 kilometers. No explanation or approval have been provided on the excess kilometers.

113. In the circumstances, delayed works impact negatively on the delivery of road infrastructure and excess and unbudgeted road works may result to unapproved road expenditure.

### **Submissions by the Accounting Officer**

114. The Accounting Officer submitted that the management was analyzing the schedule provided by the auditors to facilitate preparation of detailed responses and copies of appropriate documents for review with the auditors.

### **Observations of the Committee**

115. The Committee observed that;

- i. No approval or documentation was provided for the excess kilometers of 362.14 kilometers
- ii. No explanation was provided for the delay on construction of 1,612 km
- iii. The matter is unresolved.

### **Recommendations of the Committee**

116. The Committee recommends that:

- i. Within three months upon adoption of this report, the Accounting Officer must submit supporting information the delayed 1,612 km and the fifteen roads with excess length to the Auditor General for audit verification.
- ii. The Accounting Officer must ensure timely submission of accounting documentation required for audit verification during the audit as per the provisions of Section 31(4) of the Public Audit Act, 2015.

### **3.0 EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE ROAD LEVY FUND (KENYA RURAL ROADS AUTHORITY) FOR THE FINANCIAL YEAR 2020/2021 AND 2021/2022**

117. Eng. Philemon Kandie, MBS, the Director General, Kenya Rural Roads Authority (KERRA) appeared before the Committee on Thursday 12<sup>th</sup> October 2023 to adduce evidence on the audited financial statements for the Road Levy Fund for the Financial Years 2020/2021 and 2021/2022. The minutes of the Committee sitting, and submissions tabled by the Accounting Officer are annexed to this report. He was accompanied by:

1. Ms. Catherine Butaki - Deputy Director Communication
2. CPA Judith C Chumo - Deputy Director Audit Services
3. CPA William Abungu - Principal Accountant
4. CPA Matilda - Deputy Director Finance
5. Eng. Peter Gichohi - KERRA Director MTCE

#### **3.1 Examination of the report of the Auditor-General for the Financial Year 2020/2021 Unsupported Cash and Cash Equivalents**

118. The Statement of financial position reflects cash and cash equivalent balance of Kshs.20,827,705,000 as disclosed in Note 7 to the financial statements. The balance of negative cash balance of Kshs. 26,035,445 in the Road Maintenance Levy Fund (RMLF) Operations Headquarters account which has been offset contrary to paragraph 48 of International Public Sector Accounting Standard (IPSAS) 1 that prohibits offsetting of assets and liabilities and revenue and expenses unless required or permitted by IPSAS.

#### **Submissions by the Accounting Officer**

119. The Accounting officer submitted that the negative balance was a cashbook balance, which was rectified in the subsequent month of July 2021. The bank statement as at 30th June 2021 was positive Kshs. 25,231,707.53.

#### **Observations of the Committee**

120. The Committee observed that:

- i. The negative balance was a cashbook balance which was rectified in the subsequent month of July 2021;
- ii. The management has since provided the reconciliation that corrected the anomaly for verification; and
- iii. The matter is resolved.

#### **3.2 Examination of the report of the Auditor-General for the Financial Year 2021/2022**

##### **a. Inadequate Details in the Ledgers**

121. The Statement of financial performance and Note 4 to the financial Statements reflects Ksh 23,295,330,000 in respect of road works expenditure. Included in this amount is 10% Road Maintenance Levy Fund (RMLF) critical link roads expenditure of Ksh 3,994,932,000. However, the General Ledger provided for audit review, revealed that payments totaling to

Ksh 533,300,491 under various codes had no system description of payee. Similarly, the road works expenditure of Ksh 23,295,330,000 includes Ksh 7,950,000,00 being 22% RMLF constituency Roads funds. The latter balance includes various payments totaling to Ksh 951,756,566 which had no system description showing details of payments.

122. In the circumstances, the accuracy and completeness of payments totaling to Ksh 1,485,057,057 could not be confirmed.

#### **Submissions by the Accounting Officer**

123. The Accounting officer submitted that the system description of payee and details of payments in the various ledgers has since been reviewed and provided for verification.

#### **Observations of the Committee**

124. The Committee observed that;

- i. The general ledger provided for audit review revealed that payments under various codes had no system description of payee and details of payments.
- ii. The delay in the submission of payee and details of payments in the various ledgers was occasioned by the transition to the ERP system; and
- iii. The matter is unresolved.

#### **Recommendations of the Committee**

125. The Committee recommends that:

- i. Within three months upon adoption of this report the Accounting Officer to provide the system description of payee and details of payments totaling to Ksh 1,485,057,057 to the Auditor – General for verification;
- ii. The Accounting Officer must ensure timely submission of accounting documentation required for audit verification during the audit as per the provisions of Section 31(4) of the Public Audit Act, 2015; and
- iii. The Accounting Officer must ensure that all applicable accounting and financial controls, systems, standards, laws, and procedures are followed in the preparation of the financial statements in compliance with Public Finance Management Act, 2012 and in accordance with the standards prescribed by the Public Sector Accounting Standards Board as per Regulation 101(4) of the Public Finance Management (National Government) Regulations, 2015.

#### **b. Unresolved Prior Year Matters**

126. In the audit report of the previous year, several issues were raised, However, the management has not resolved the issues or given explanation for failure to adhere to the provisions of the public Sector accounting Standards Board template.

#### **Submissions by the Accounting Officer**

127. The Accounting officer submitted that the Audit comments were noted and the Authority has since complied in the in the subsequent year

### **Observations of the Committee**

128. The Committee observed that;

- i. The Authority did not provide evidence of having resolved prior year matter.
- ii. The matter is unresolved.

### **Recommendations of the Committee**

129. The Committee recommends that:

- i. The Accounting Officer should take appropriate measures to resolve the outstanding prior audit issues as required by Section 68(2)(1) of the Public Finance Management Act, 2012 and submit the necessary documentation to the Auditor-General for verification during subsequent audits;

## **REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES**

### **c. Anomalies Noted During Projects Inspections**

130. Physical inspection of 20 projects with total contract sum of Ksh 76,384,259 carried out in the month of February 2023 revealed various anomalies as highlighted in Appendix 1 attached. In the circumstances, the projects may not have been executed as scheduled which negatively impact realization of value for money to the public.

### **Submissions by the Accounting Officer**

131. The Accounting officer submitted that the projects listed are short-term contracts with limited scope of work. The projects were designed as gravel roads. He noted that the main objective of those projects was to open and improve motorability of critical links within our roads network.

132. He further submitted that due to limited project scope and funding, several activities in the project may have been carried over to be executed as when funds are available.

### **Observations of the Committee**

133. The Committee observed that:

- i. The projects listed were short term contracts with limited scope of works to open and improve motor ability of critical links within roads network.
- ii. The matter is unresolved.

### **Recommendations of the Committee**

134. The committee recommends that Within three months upon adoption of this report, the Accounting Officer must provide a status report of all pending projects to the Auditor General for verification.

#### **4.0 EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF ROADS MAINTENANCE LEVY FUND (RMLF) – KENYA URBAN ROADS AUTHORITY FOR THE FINANCIAL YEARS 2020/2021 AND 2021/2022**

135. Eng. Silas Kinoti, The Director General Kenya Urban Roads Authority appeared before the Committee on Tuesday 19<sup>th</sup> October 2023 to adduce evidence on the audited financial statements for the Roads Maintenance Levy Fund (RMLF) – Kenya Urban Roads Authority (KURA) For the Financial Year 2020/2021 And 2021/2022. The minutes of the Committee sitting, and submissions tabled by the Accounting Officer are annexed to this report. He was accompanied by:

- 1) Eng. William Oginga - Director Finance Services
- 2) Mr. Reuben Mayienda - Director Cooperate Services
- 3) Eng. Abdul Rashid Mohammed - Director Roads and Maintenance

#### **4.1 Examination of the report of the Auditor-General for the Financial Year 2020/2021**

##### **a. Unsupported Cash and Cash Equivalents**

136. The statement of financial position reflects cash and cash equivalents of Kshs 2,717,690,436. However no separate account for this Fund was maintained as funds were banked in the Authority's main bank account. Further the balance was not supported with cashbook, bank reconciliation statements and bank confirmation certificates. In the circumstances the accuracy and completeness of the cash & cash equivalents balance of Kshs.2,717,690,436 could not be confirmed.

##### **Submissions by the Accounting Officer**

137. The Accounting Officer submitted that the RMLF funds were part of the Authority's funds held in KCB Bank which was supported by the bank statements, bank reconciliations and confirmation certificates.

138. He further submitted that the opening of separate bank accounts for road maintenance funds was a new requirement. Historically both the Administration and the works funds were banked in one bank account. He also stated that as confirmed by the Audit, the funds were banked in the Authority's main account. The Authority has since opened a separate account for the RMLF funds.

##### **Observations and findings of the Committee**

139. **The** Committee observed that:

- i. The Fund cash and cash equivalent as included in the KURA main account balance of Kshs. 2,717,690,436 were supported with a cashbook, bank reconciliation statements and bank confirmation certificates;
- ii. The Fund had since opened a separate account for the Road Maintenance Levy Funds (RMLF) and its operational; and
- iii. The matter is resolved.

#### **b. Maintenance of Nairobi - Outering Road**

140. Physical verification of the project carried out revealed that the designated pedestrian foot bridge at the main junction of Outering Road and Thika Road lacked barriers and lighting system. Further, the Tassia road section, had open drainages clogged with garbage and overgrown vegetation despite the fact that a firm had been contracted to regularly maintain the drainages along the road value for money from road assets may not be achieved.

#### **Submissions by the Accounting Officer**

141. The Accounting Officer submitted that:

- i. Cleaning of drainage channels and collection of garbage within the road is a continuous exercise and since the road is in a built-up area, dumping and filling of drains occurred frequently;
- ii. The contractor has been instructed to ensure the drains are clean all the time during the contract period. The Authority also engaged the County Government on the control of the dumping on the road and on the drainage;
- iii. Vandalism of road assets more so the metallic ones is national challenge to all the road agencies. However, KURA through collaboration with National Police Service has since enhanced surveillance to deter and apprehend the vandals; AND
- iv. KURA was also liaising with other stakeholders to address the challenge.

#### **Observations and findings of the Committee**

142. **The** Committee observed that:

- i. The designated pedestrian foot bridge at the main junction of Outering Road and Thika Road lacked barriers and lighting system.
- ii. The Tassia road section, had open drainages clogged with garbage and overgrown vegetation
- iii. Management indicated that the road covered a densely populated area (built-up area) resulting to frequent dumping and filling up of drains as well as constant challenge of vandalism.
- iv. No evidence of collaboration with responsible agencies, clean up exercises or arrest of vandals had been provided to demonstrate efforts to control the vice.
- v. The matter is unresolved.

#### **Recommendations of the Committee**

##### **The Committee recommends that**

- i. Within three months upon adoption of this report, the Accounting Officer must enforce the provisions of the contracts relating to the erection of barriers on the pedestrian foot bridge and lighting system at the main junction of Outering Road and Thika Road and provide a report on the enforcement to the Auditor general for verification.

- ii. The Committee recommends that within three months upon the adoption of this report the Accounting Officer to engage with security agencies and other stakeholders on the matter of vandalism and provide supporting evidence on the steps taken to ensure the matter is addressed for audit verification.

**c. Foot Bridge on Eastern Bypass Road City Cabanas Area**

143. Physical verification conducted revealed that the metal bars erected to ensure the safety of pedestrian crossing the road had been vandalized and had not been replaced exposing pedestrians to the risk of being run over by speeding vehicles. Value for money from road assets may not be achieved.

**Submissions by the Accounting Officer**

144. The Accounting Officer submitted that the Authority intended to concrete barriers since they are not vulnerable to vandalism and sensitize pedestrians to use the footbridge to minimize the risk of accidents by vehicles. The Authority had further engaged the national police to aid in enforcement and surveillance.

**Observations and findings of the Committee**

**145. The Committee observed that:**

- i. Metal bars erected to ensure the safety of pedestrians crossing the road had been vandalized and had not been replaced exposing pedestrians to the risk of being run over by speeding vehicles
- ii. Management did not provide evidence of public barazas or any form of engaging the public to contain vandalism;
- iii. Management did not provide evidence of correspondences with the National Police service on surveillance and measures to contain vandalism; and
- iv. The matter is unresolved.

**Recommendations of the Committee**

146. The Committee recommends that
- i. Within six months upon the adoption of this report, the Accounting Officer must engage with security agencies on the matter of vandalism and provide supporting evidence on the steps taken to address the matter for audit verification.
  - ii. The Accounting Officer must consider constructing guard rails with concrete and not metal bars to mitigate the issue of vandalism.

## **4.2 Examination of the report of the Auditor-General for the Financial Year 2021/2022**

### **a. Non-compliance with Public Sector Accounting Standards Board Reporting Requirements**

147. The financial statements did not comply with the recommended reporting template provided by Public Sector Accounting Standards Board.

#### **Submissions by the Accounting Officer**

148. The Accounting officer submitted that:

- i. The templates issued by the Public Sector Accounting Standards Board (PSASB) contains guidelines are derived from International Public Sector Accounting Standards (IPSAS) and relevant statutes. However, like any other templates they may not be exhaustive, and the preparers of the financial statements are advised to refer to the relevant standards as well as the statutes to ensure full compliance.
- ii. The Authority reviewed the template and noted some errors and omissions that if not corrected would have significant effect on the financial statements. In particular, the template did not meet the threshold of Road Maintenance Levy Fund as defined by the relevant legislation. Hence the need to correct the anomaly.
- iii. Road Maintenance Levy Fund is defined under Section 7 of the RMLF Act 1993. Under subsection 2 of the above Act, 'The Fund shall consist of the proceeds from the levy and the transit tolls levied under the Public Roads Toll Act (Cap. 407).
- iv. The modification was done in compliance with International Public Sector Accounting Standards (IPSAS) 1 to ensure the financial statements met the qualitative characteristic of relevance, faithful representation, understandability, comparability, and verifiability.

#### **Observations and findings of the Committee**

##### **149. The Committee observed that:**

- i. Financial statements were not prepared using the recommended reporting template as provided by the Public Sector Accounting Standards Board.
- ii. Management explained that the financial statements were modified to report on both the works and operation components and that they have written to Public Sector Accounting Standards (PSASB) for concurrence. Management provided the letter to Public Sector Accounting Standards (PSASB)and
- iii. The matter is unresolved.

### Recommendations of the Committee

150. The Committee recommends that:

- i. Within three months upon adoption of this report, the Accounting Officer must follow up on the concurrence for the Board on the modification of the issued template and provide the same for audit verification; and
- ii. The Accounting Officer must use the templates provided by Public Sector Accounting Standards (PSASB) in the absence of a concurrence from Public Sector Accounting Standards PSASB.

#### b. Receivables from Non-Exchange Transactions

151. Included in the Receivables from non-exchange transactions balance of Kshs.5,097,011,271 is grants receivable-RMLF of Kshs.5,077,624,094 due from Kenya Roads Board.

152. However, the audited financial statements of Kenya Roads Board Fund reflect RMLF disbursement payable to Kenya Urban Roads Authority of Kshs.2,322,321,695 as at the same date, resulting to unreconciled difference of Kshs.2,755,302,399. In the circumstances, the accuracy of RMLF grants receivable of Kshs.5,077,624,094 could not be confirmed.

### Submissions by the Accounting Officer

153. The Accounting officer submitted that:

- i. Grants receivable is accrued based on the records available to the Authority.
- ii. According to our records grant receivable from Kenya Roads Board amounted to Kshs.5,077,624,094 as reported in the financial statements for the year ended 30th June 2022. The supporting documents for the above amounts are available for verification.
- iii. As you may have noted and verified from the schedule provided and the bank statements, the above amounts were subsequently received in the beginning of the F/Y 2022-2023 on the dates indicated below:

Date	Amount
5th July 2022	1,025,834,012
8th July 2022	1,133,678,923
15th July 2022	2,918,111,159
<b>Total</b>	<b>5,077,624,094</b>

### Observations and findings of the Committee

154. The Committee observed that:

- i. The Management has since provided the schedule/ break down of the grant receivable from Kenya Roads Board.
- ii. The amounts were accrued for the financial year 2021/2022 but were received in July 2022 after the end of the financial year 2021/2022.

- iii. The balance reflected in the Authority's financial statements was properly analyzed.
- iv. The matter is resolved.

**c. Unimplemented Projects in Annual Public Roads Program**

155. Review of the road contracts and records on projects implementation under Road Maintenance Levy Fund revealed that road maintenance projects totaling Kshs.91,074,153 in the Annual Public Roads Program (APRP) were not implemented.
156. In the circumstances, the expected benefits from the unimplemented projects did not accrue to the public and there was non-compliance with the approved budget.

**Submissions by the Accounting Officer**

157. The Accounting Officer submitted that all the detailed projects in the approved Annual Public Roads Program (APRP) FY 2021-2022 were provided for verification .

**Observations and findings of the Committee**

158. The Committee observed that:
- i. Road maintenance projects totaling Kshs. 91,074,153 in the Annual Public Roads Program (APRP) were not implemented.
  - ii. Funds for financing the Annual Public Roads Maintenance Program were not disbursed.
  - iii. The matter is unresolved.

**Recommendations of the Committee**

159. The Committee recommends that:

Within three months upon the adoption of this report the Accounting Officer to provide a progress report and supporting documents on implementation of the road maintenance projects to the Auditor General for audit verification.

**d. Nairobi Outering Road Improvement Project**

160. The contract for Nairobi Outering Road Improvement project was awarded at a contract price of Kshs.8,263,399,494 and ended in April, 2020 with a two years defects liability period.
161. As previously reported, the project was on a maintenance contract but had challenges of open drainages that were used as receptacles of garbage / dumpsites. It was also noted that there were mounds of garbage by the roadside on certain sections. Audit inspection carried out on 15 February, 2023 noted improvements on the observations made in the previous year. However, following issues were still outstanding;

- i. Cleaning of closed drains was not done well and some drainage covers had been vandalized. The maintenance contractor on site needs to plan for occasional cleaning of the closed drains to avoid flooding especially during rainy season;
- ii. Dumping of garbage on various sections of the road was seen to be posing a challenge to the contractor; and
- iii. Pedestrians were seen to cross the road on various sections whereas there are footbridges erected for crossing.

162. In the circumstances, there is a risk of flooding on the road and loss of pedestrians' lives especially where there are no barriers.

#### **Submissions by the Accounting Officer**

163. The Accounting Officer submitted that:

- i. There is an ongoing Performance Based Contract on Outering roads responsible for general cleaning of the carriageway drains and minor repairs. There are several foot bridges already installed on this road and the Authority is working on additional measures to improve safety.
- ii. The canopies were not part of the footbridge design, and this was purposefully left out to deter hawkers and street families from occupying the facilities. It is also geared towards improving security of the pedestrians. The metal and concrete barriers used in some sections of the road were vandalized. This is a common problem in the infrastructure Sector. We are working on alternative materials for barriers.

#### **Observations and findings of the Committee**

164. The Committee observed that:

- i. The contractor was not fully executing the contract by not clearing garbage dumped on various sections of the road and not protecting drainage covers from vandalism.
- ii. The management has indicated that there had been vandalism on erected metal barriers, and which was a common challenge in the sector;
- iii. Management has since demonstrated efforts in improving the usage of the road; and
- iv. The matter is unresolved.

#### **Recommendations of the Committee**

165. The Committee recommends that within six months upon the adoption of this report.

- i. The Accounting Officer must engage with security agencies on the matter of vandalism and provide supporting evidence on the steps they intend to take to deal with the issue .

- ii. The Accounting Officer must consider constructing guard rails with concrete and not metal bars to mitigate the issue of vandalism.
- iii. The Accounting Officer must provide evidence of steps Management is taking to ensure compliance with the contract for general cleaning of the carriageway drains and minor repairs to the Auditor General for audit verification.

**e. Improvement of Nairobi Lot 2 – Upgrading of Shreeji Road and Parts of Likoni and Enterprise Roads (Contract No.KURA /HQ/330/2019-2020)**

166. The contract for the road works was awarded at a contract sum Kshs.892,661,116 on 08 September, 2020 contract duration of 24 months and an expected completion date of 30 September, 2022. It also included a 36 months PBC maintenance contract at a cost of Kshs.13,250,790.

167. The scope of the contract included rehabilitation and upgrading of single carriageway of Shreeji road (1.1K.m) to two lanes two-way 7m, construction of walkways and drains, expansion of existing bridge over rail on Likoni road and river bridge on Enterprise Road, concrete drains on both sides, pipe culverts and other drainage works and road furniture. The contract duration elapsed, and the contract period was subsequently extended to 08 April, 2023. The contractor is however still behind schedule as some of the major road works had not been undertaken as detailed below:

- i. Likoni road bridge section is incomplete.
- ii. Enterprise road bridge section is incomplete; provision of the pavement structure is incomplete. It was agreed with the Authority, that for this section the contractor would submit design drawings for the proposed bridge structure.
- iii. A section of Shreeji road is incomplete. The contractor was doing earthworks as at the time of the audit on 15<sup>th</sup> February 2023. It was agreed that the contractor submit a workplan which will be shared with the owners of the warehouses whose access will be affected as the contractor carries out the remaining construction works.

168. In the circumstances, it is unlikely that the project will be completed by the new completion date of 8 April, 2023 and there is a risk that costs may escalate due to the effects of inflation extension of time.

**Submissions by the Accounting Officer**

169. The Accounting Officer submitted that the works were ongoing. The Likoni Bridge section was omitted from the above contract due to the conditions from the Kenya Railways which were not factored in during the design period and thus cannot be accommodated within the Contract. He stated that the contractor submitted a workplan which was shared with the owners of the warehouses whose accesses would be affected as the construction works proceed.

## **Observations and findings of the Committee**

170. **The** Committee observed that:

- i. The contract duration lapsed, and the contract period was subsequently extended to 08 April, 2023
- ii. The contractor was still behind schedule as some of the major road works had not been undertaken
- iii. The Likoni Bridge section was omitted from the above contract because Kenya Railways was not consulted at the design stage of the works and hence, its input was not included in the Contract.
- iv. No justification was provided for failure to consult Kenya Railways or the owners of the warehouses before the issuance of the contract or the commencement of works.
- v. The matter is unresolved.

## **Recommendations of the Committee**

The Committee recommends that ;

- (i) Within six months upon the adoption of this report the Accounting Officer must provide a progress report and supporting documents for the project to the Auditor General for audit verification and
- (ii) The Accounting Officer must provide a progress report on the engagement with the Kenya Railways and the owners of the warehouses.

### **f. Eastern By-pass Road-Footbridge near Cabanas Area**

171. The construction of the footbridge was carried out by the Authority through funding from African Development Bank and completed for use several years back. -The Authority had also erected metal barriers along the road and in between the bars were light metal sheets to ensure that the pedestrians do not cross the road at undesignated areas but instead use the footbridge for their own safety. During the audit inspection carried out on 15 February 2023, it was observed that the barriers were either crashed by speeding vehicles or had been vandalized. This resulted to risk of loss of lives by pedestrians not using the footbridges.

172. This issue had been noted and reported in the previous year's audit with no intervention from Management of the Authority. In the circumstances, there is a risk of loss of pedestrians' lives as there are no barriers to ensure safe usage of the footbridge and the public may not get value for money on the road maintenance contract.

## **Submissions by the Accounting Officer**

173. The Accounting officer submitted that:

- i. The steel barriers have been erected severally and have been repeatedly and extensively vandalized.
- ii. The authority has put emphasis on using concrete as barriers since they are not vulnerable to vandalism.
- iii. Pedestrians also are being sensitized to use the provided footbridge to minimize the risk of accidents by vehicles.

- iv. A more permanent solution shall be put in place in due course by involving all security agencies to ensure that the road is clear and vandalism is eliminated.

#### **Observations and findings of the Committee**

174. The Committee observed that:

- i. Metal barriers along the road were either crashed by speeding vehicles or vandalized which exposed pedestrians to accidents for opting to cross the road instead of using the foot bridge.
- ii. The authority had put emphasis on using concrete as barriers since they are not vulnerable to vandalism.
- iii. Pedestrians were being sensitized to use the provided footbridge to minimize the risk of accidents by vehicles.
- iv. The matter is unresolved.

#### **Recommendations of the Committee**

**175. The Committee recommends that-**

- (i) within six months upon the adoption of this report ,the Accounting Officer must engage with security agencies on the matter of vandalism and provide a progress report to the Auditor -General.
- (ii) The Accounting Officer must consider constructing guard rails with concrete and not metal bars to mitigate the issue of vandalism.

## **5.0 EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE ON THE ROAD MAINTENANCE LEVY FUND (KENYA WILDLIFE SERVICE) FOR THE FINANCIAL YEAR 2020/2021 AND 2021/2022**

176. Dr. Erustus Kanga the Director General, Kenya Wild Service appeared before the Committee on Thursday 23<sup>rd</sup> November 2023 to adduce evidence on the audited financial statements for the Road Maintenance Levy Fund for the Financial Years 2020/2021 and 2021/2022. The minutes of the Committee sitting, and submissions tabled by the Accounting Officer are annexed to this report. He was accompanied by:

1. Mr. Peter Mathenge - Senior Accountant KWS
2. Prof. Charles Musyoki - Director of Parks and Reserves
3. Mr. Micah Aiyabel - Principal Superintendent of Roads
4. Mr. Johana Tonui - Principal Superintendent Accounts
5. Mr. Benard Mbeda - Ag. Director of Infrastructure & Facilities Management
6. Ms. Leah Nausia - Director of Supply Chain Management

### **5.1 Examination of the report of the Auditor-General for the Financial Year 2020/2021**

#### **a. Retention Monies not Held in a Separate Account**

177. The statement of financial position reflects other payables of Kshs.28,303,797 (2020: Kshs.7,876,753) which, as disclosed in Note 8 to the financial statements, includes contractors' retention monies balance to Kshs.9,985,928 held by the Fund. However, Management did not maintain a separate bank account for deposits and payments of retention monies and instead, the Fund used an operations account which is in the name of Kenya Wildlife Service.

178. The retention monies may not be available to pay contractors as and when claims for retention are presented for payment. Further, the schedule of retention monies includes unpaid retention monies amounting to Kshs.213,605 which are over five (5) years old. In the circumstances, the accuracy and existence of retention monies balance of Kshs.9,985,928 could not be confirmed.

#### **Submissions by the Accounting Officer**

179. The Accounting Officer submitted that the Service has a specific bank account for Kenya Roads Board (KRB) operations. The account served as the recipient of funds transferred from the Kenya Roads Board and accrued interest. He confirmed that all expenditures related to the Road Maintenance Levy Fund were processed through the account.
180. He acknowledged, that the Service currently did not maintain a separate bank account specifically designed for retention money as highlighted in the Audit report
181. He further submitted that the retention money represented a portion of the contract price withheld for a define period after completion of works. He stated that this withholding was intended to ensure that contractors met the prescribed quality and standards.
182. He also submitted that the disbursement of the retained funds to the contractors was upon the conclusion of the agreed retention period. He further explained that if the retention money was moved to another separate account, it would amount to irregular transfer and splitting of specific projects funds and thus a contravention of PFM Act.
183. He further submitted that to uphold accuracy in the reporting and disbursement of retention money, specific supplier ledger accounts were maintained, reconciled monthly and when contracts had been fully discharged, certificates of completion were issued, and the retention money immediately paid to the contractor.
184. The Accounting Officer also confirmed an amount totaling Ksh 9,985,928 was securely being held in KRB bank account. He explained that this amount was appropriately documented under current liabilities and was to be disbursed to the contractors as per the agreed schedule reported under current liabilities and payable to contractors when it falls due.

#### **Observations of the Committee**

185. The Committee observed that:
- i. The Fund did not maintain a separate bank account for deposits and payments of retention monies, instead, had an operations account, which received all funds transferred from Kenya Roads Board and interest accrued thereon;
  - ii. The Fund operated a financial system which had a creditor's module that maintained specific ledger balances per individual contractor which was reconciled monthly with the bank balances ensuring funds were always available to pay contractors once their contracts have been fully discharged and certificate of completion issued; and .
  - iii. The matter is unresolved.

#### **Recommendation of the Committee**

##### **The Committee recommends that**

Within three months upon adoption of this report, the Service must open and maintain a separate account for retention monies

#### **b. Variances in Road Maintenance Levy Fund**

186. The statement of financial performance reflects road maintenance levy fund amount of Kshs.871,051,487 which is at variance with the road maintenance levy fund amount of Kshs.721,507,377 reflected in the statement of comparison of budget and actual amount by unexplained variance of Kshs.149,544,111. In the circumstances, the accuracy and

completeness of the road maintenance levy fund amounting to Kshs.871, 051,488 could not be confirmed.

#### **Submissions by the Accounting Officer**

187. The Accounting Officer confirmed that the annual budget allocation for KRB project was Kshs. 871,051,488 during the financial year 2020/2021. He submitted that the actual amount received from KRB during the year was Kshs.721,507,377 and the balance of Kshs. 149,544,111 was accrued as receivable as at 30<sup>th</sup> June 2021 and this amount was subsequently transmitted to KWS on July 7<sup>th</sup> 2021, as indicated in the copy of the bank statement which was provided for verification.

#### **Observations of the Committee**

188. The Committee observed that:

- i. The variance of Kshs. 149,544,111 was recorded as an accrual under receivables and was subsequently transmitted to KWS and verified by the Auditor General.
- ii. The matter is resolved.

#### **c. Budget Over Expenditure**

189. The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.871,051,488 and Kshs.753,936,800 respectively resulting to an under-funding of Kshs.117,114,688 or 13% of the budget. Similarly, the Fund spent Kshs.1,284,062,760 against an approved budget of Kshs.871,051,488 resulting to an over-expenditure of Kshs.413,011,272 or 147% of the budget.

190. However, Management has disclosed that the work plan for 2019/2020 with an approved budget of Kshs.669,668,404 was implemented in the current financial period of 2020/2021. The Fund therefore could not absorb all the funds meant for the year under review as there were pending projects for 2019/2020 which were given priority.

191. In the circumstances, the Fund operated over and above the approved budget for the year contrary to the Appropriation Act, 2018, the Supplementary Appropriation Act, 2018 and Section 43 (b) of Public Finance Management Regulations, 2015. Management was in breach of the law.

#### **Submissions by the Accounting Officer**

192. The Accounting Officer submitted that the approved budget allocated for KRB project during the financial year 2020/2021 was Kshs. 871,051,488. He also confirmed the amount of Kshs. 721, 507,377 was received from KRB during the year and the balance of Kshs. 149,544,111 was accrued as receivable and later remitted to KWS on 7<sup>th</sup> July 2021.

193. He further submitted that a total amount of Kshs 871,051,488 was received across two consecutive financial years: Kshs 721,507,377 in the financial year 2020/21 and Kshs 149,544,111 in the financial year 2021/22. He further explained that the KRB bank account accrued interest totaling Kshs. 32,429,423.00 in the financial year 2020/21. He then elaborated that this interest, when added to the actual receipts from KRB (Ksh. 721,507,377-

KRB + Kshs. 32,429,423-Interest income) during the financial year, amounted to a total of Kshs. 753,936,800.00.

194. The Accounting Officer also submitted that the overall expenditure for the financial year in review amounted to Kshs. 1,284,062,760. Further when contrasted with the budgeted amount of Kshs. 871,051,488, there exists a variance of Kshs. 413,011,272. He clarified that this variance corresponded to payments made for rollover projects from the preceding year that were concluded and settled during the reviewed financial year as indicated in the table below:

	APRP BUDGET FY2020/21 (KSH)	ACTUAL FY 2020/21 (KSH)	VARIANCE FY 2020/21 (KSH)
<b>Receipts</b>			
Road Maintenance Levy FYAPRP 2020-2021 regular in addition to Special allocation	871,051,488.00	721,507,377	149,544,111
Finance Income (Interest)		32,429,423	(32,429,423)
<b>Total received</b>	<b>871,051,488</b>	<b>753,936,800</b>	<b>117,114,688</b>
<b>Expenditure</b>			
Administrative cost	25,204,827	17,017,909	8,186,918
Roads Works	845,846,661	1,267,044,851	(421,198,190)
<b>Total Expenditure</b>	<b>871,051,488</b>	<b>1,284,062,760</b>	<b>(413,011,272)</b>

#### Observations of the Committee

195. The Committee observed that:

- i. The amount of Kshs 871,051,488 was received across two consecutive financial years: Kshs 721,507,377 in the financial year 2020/21 and Kshs 149,544,111 in the financial year 2021/22.
- ii. The funds received during the two financial years and interest earned have been verified by the Auditor General but no documentary evidence on the utilization was provided.
- iii. The Interest earned amounting to Kshs. 32,429,423 was budgeted for in the subsequent financial year 2020/2021.
- iv. The matter is resolved

#### Recommendations of the Committee

196. The Committee recommends that:

- i. Within three months of the adoption of this report, the Accounting Officer to provide documentary evidence on the utilization of the interest accrued amounting to Kshs. 32,429,423 to the National Assembly for verification and

## **REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES**

### **d. Delay in Completion of Projects**

197. Annex 1 to the financial statements reflects schedule of unexecuted works and ongoing works totaling to Kshs.181,683,632. Included in this balance is Kshs.66,170,333 or 36% for two (2) ongoing projects awarded in 2015/2016 financial year. However, by the time of audit in the month of June, 2022, percentage completion of the two (2) projects was at 75% and 72% respectively.
198. The Management has however, explained the slow pace of implementation of these projects was due to unforeseen adverse weather conditions and inflation of prices of basic items for major works. In the circumstances, the value for money, efficiency and effectiveness of these projects may not have been derived due to the delay in completing the projects.

### **Submissions by the Accounting Officer**

199. The Accounting Officer submitted that the two contracts, namely KWS/OT/PBC/R&F/18/2015-2016 for the Rehabilitation and Performance-Based Routine Maintenance of Old Murera Gate-Kindani-Junct 22 in Meru National Park and KWS/OT/PBC/R&F/20/2015-2016 for the Rehabilitation and Performance-Based Routine Maintenance of Elephant platform Kambi Mtamaiywa circuit road in Mt. Elgon National Park were awarded during the financial year 2015-2016. The contracts, which commenced on 9th May 2016, had a duration of 42 months.
200. He further submitted that the projects were characterized as hybrid Performance-Based Contracts (PBC), encompassing both rehabilitation and performance aspects, and were executed over a period spanning three financial years. He further explained that throughout the rehabilitation phase, both projects encountered difficulties, including the impact of unexpected adverse weather conditions and the inflation of prices for essential items in major construction works.
201. He also submitted that the challenges caused delays in project delivery, resulting in variations in both the contract period and the contract amount. The completion of contract KWS/OT/PBC/R&F/20/2015-2016 was accomplished on 29th September 2021, and the final payment was processed on 10th October 2021 as had been attached completion certificate in. He noted that contract KWS/OT/PBC/R&F/18/2015-2016 was finalized in February 2022 and the completion certificates was provided for verification.

### **Observations and Findings of the Committee**

202. The Committee observed that;

- i. The percentage of completion for the projects in Meru and Mt. Elgon national parks by June,2022 was at 75% and 72% respectively.
- ii. The two projects for the Rehabilitation and Routine Maintenance of Old Murera Gate-Kindani-Junct 22 in Meru National Park and the Elephant platform Kambi Mtamaiywa circuit road in Mt. Elgon National Park were complete and tender contract submitted; and
- iii. The matter is resolved.

**e. Lack of a Disaster Recovery Plan**

203. During the year under review, the Fund did not have a Disaster Recovery Plan in place which details recovery procedures in place that may lead to serious organizational and institutional memory which may lead to loss of crucial data and information in case of disaster. In the circumstances, it was not possible to confirm control measures put in place by management to safeguard data and recovery in case of a disaster.

**Submissions by the Accounting Officer**

204. The Accounting Officer submitted that the Service initiated a vulnerability assessment and penetration testing in September 2022 to assess the resilience of internal systems against cyber-attacks, ICT systems failure, and data protection risks. The assessment was conducted by the National Computer and Cybercrimes Coordination Committee (NC4), and the results identified vulnerable areas, leading to specific recommendations that are currently being implemented.

**Observations and Findings of the Committee**

205. The Committee observed that;
- i. the Fund did not have a Disaster Recovery Plan in place which may lead to loss of crucial data and information in case of a disaster.
  - ii. That the Fund has since put in place a risk management policy but there was no time limit provided to complete the disaster recovery plan.
  - iii. The matter is unresolved.

**Recommendations of the Committee**

**206. The Committee recommends that:**

Within three months upon the adoption of this report the Accounting Officer must submit its risk management policy of to the Auditor -General for audit verification;

**5.2 Examination of the report of the Auditor-General for the Financial Year 2021/2022**

**a. Unsupported Projects' Expenditure**

207. As previously reported Annex 1 to the financial statements for 2020/2021 reflected schedule of unexecuted works and ongoing works totaling to Kshs.181, 683,632. Included in this balance is Kshs.66, 170,333 or 36% for two (2) ongoing projects awarded in 2015/2016 financial year. However, Annex 1 to the financial statements for 2021/2022 does not reflect the projects status and no project completion certificates were provided for audit. Further Annex 1 to the financial statements for 2021/2022 contains six (6) projects awarded in 2020/2021 totaling to Kshs.114,658,008 or 35% of the total outstanding uncertified projects with completion percentages of between 40% and 92%.

208. The Management has not provided reasons for non-completion of the projects. In the circumstances, the accuracy and completeness of the ongoing and unexecuted projects balance of Kshs.330,397,532 could not be confirmed.

### **Submissions by the Accounting Officer**

209. The Accounting Officer submitted that he initiated the awarding of two contracts, namely KWS/OT/PBC/R&F/18/2015-2016 for the Rehabilitation and Performance-Based Routine Maintenance of Old Murera Gate-Kindani-Junct 22 in Meru National Park and KWS/OT/PBC/R&F/20/2015-2016 for the Rehabilitation and Performance-Based Routine Maintenance of Elephant Platform Kambi Mtamaiywa Circuit Road in Mt. Elgon National Park. He confirmed that the contracts were granted during the financial year 2015-2016, with a contract period of 42 months starting from May 9, 2016. He then stated that the projects, characterized as hybrid Performance-Based Contracts (PBC), involving both rehabilitation and performance aspects, were executed over a period spanning three financial years.

210. He also submitted that throughout the rehabilitation phase, the two projects encountered emerging challenges, including the impact of unexpected adverse weather conditions and a rise in the prices of essential materials needed for major works. He further explained that these difficulties led to delays in the delivery of the projects, necessitating adjustments to the contract period to ensure the completion of tasks and modifications to the contract amount.

211. He further submitted that the completion of contract number KWS/OT/PBC/R&F/20/2015-2016 was accomplished on September 29, 2021, with the final payment processed on October 10, 2021. Further contract number KWS/OT/PBC/R&F/18/2015-2016 was concluded in February 2022 and attached copies of completion certificate.

212. The six (6) contracts, with a combined value of Kshs 114,658,088, awarded in 2020/2021, were carried out during the fiscal year 2021/2022. However, he explained that the contracts faced setbacks, including adverse weather conditions, causing delays in the execution of the works. The projects were eventually completed in the financial year 2022/23 and had been fully compensated. The copies of the payment vouchers were provided for audit verification.

### **Observations and Findings of the Committee**

213. **The Committee** observed that;

- i. The percentage of completion for the projects in Meru and Mt. Elgon national parks by June,2022 was at 75% and 72% respectively.
- ii. The two projects for the Rehabilitation and Routine Maintenance of Old Murera Gate-Kindani-Junct 22 in Meru National Park and the Elephant platform Kambi Mtamaiywa circuit road in Mt. Elgon National Park were complete and tender contract submitted; and
- iii. The matter is resolved.

#### **Recommendations of the Committee**

214. **The** Committee recommends that:

The Accounting Officer must at all times ensure timely submission of accounting documentation required for audit during the audit as per the provisions of Section 31(4) of the Public Audit Act, 2015.

#### **REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES**

##### **b. Unapproved Payment of Contingencies**

215. A review of Bill of Quantities for tenders awarded and paid during the 2021/2022 financial year revealed that contractors made provisions for contingencies amounting to Kshs.40,821,578 which were paid during the year under review. However, the contract variation and amendments emanated from the procuring Entity and were neither reviewed by an evaluation committee, nor submitted through the Head of Procurement or to the Accounting Officer for approval.

216. This is contrary to Regulation 132 (1) and (2) of the Public Procurement and Asset Disposal Regulations, 2020 which states that Contract variations or amendments envisaged under Section 139(1)(b) of the Act for goods, works and services may either emanate from Procuring Entity on its own volition or from the contractor, and (2) Any variation request shall be reviewed. The payment of contract variations and amendments without review by an evaluation committee may result in misappropriation of funds. In the circumstances, the management was in breach of the law.

#### **Submissions by the Accounting Officer**

217. The Accounting Officer submitted that the mentioned figures relate to:

- a) The emergency components of seven (7) Performance-Based Contracts, amounting to Kshs.29,113,872.00.
- b) Contingency provision within eleven (11) contracts, summing up to Kshs 11,707,706.58.

#### **Use of Emergency Amount-under PBCs- 29,113,872**

218. The Accounting Officer submitted that the emergency works undertaken were envisaged in the Performance Based Contract (PBC) hence there were no variations. He also clarified that although Kshs 29,113,872 was budgeted for emergency works, Kshs 25,191,583.62 was spent resulting in a saving of Kshs 3,922,289. The PBC contracts incorporated rehabilitation, maintenance and emergency works which were all scoped in the contract. He also clarified that due to the nature of occurrence of emergencies in park roads and the need for quick response on rectification as per the contract's provisions on timelines, the Resident engineers

normally requested to utilize the emergency fund. He also stated that Kshs 25,191,583.62 was spent on such emergency works and were duly approved in FY 2021/22.

219. He further submitted that the response times, for example, cleaning of the carriageway for an unpaved road in PBC Guideline, was set as within 24 hours after the occurrence of the event. He also explained that in Emergency cases, the Engineer is obligated to approve its execution in less than 24hrs and utilize the amount set out under the emergency component of the Bill of Quantities. The extract of the Performance Standards for Unpaved Standard Road was provided for verification.

**Use of Contingency Amount-Kshs 11,707,706.58**

220. The Accounting Officer submitted that during the implementation of FY2021-2022 RMLF projects, the following batch of contracts had significant rearrangement of quantities of items of works within the contract sum and completion dates, hence requiring evaluation under contract variations.

Contract No.	Contingency Amount (Kshs)	Remarks	Approval Ref
KWS/OT/RMLF/42/FY2020-2021	1,732,224.13	This contract had an appraisal leading to substantial change in quantities of work beyond the 20% allowed in the Act	Signed and approved Evaluation Report for Works appraisal and Extension of time report dated 25th March 2022.
KWS/OT/TPF/41/FY2020-2021	2,465,968.00	Note that this project was funded under Tourism Promotion Fund and not RMLF. This contract had an appraisal leading to substantial change in quantities of work beyond the 20% allowed in the Act	Signed and approved Evaluation Report for Works appraisal and Extension of time report dated 25th March 2022.

KWS/OT/RMLF/50/FY2020-2021	2,643,548	This contract had an appraisal leading to substantial change in quantities of work beyond the 20% allowed in the Act	Signed and approved Evaluation Report for Works appraisal and Extension of time report dated 18th July 2022.
KWS/OT/RMLF/51/FY2020-2021	1,821,760.10	This contract had an appraisal leading to substantial change in quantities of work beyond the 20% allowed in the Act	Signed and approved Evaluation Report for Works appraisal and Extension of time report dated 7th June 2022.
Total 8,663,500			

221. He further submitted that the following works experienced rearrangement of quantities within the existing items of work, rates quoted, and the contract sum as guided by Clause 13, 51, & 52 of the General conditions of contract (FIDIC).

Contract No.	Contingency Amount (Kshs)
KWS/OT/RMLF/17/FY2020-2021	458,615.99
KWS/OT/RMLF/21/ FY2020-2021	329,475.00
KWS/OT/RMLF/22/2020-2021	979,838.85
KWS/OT/RMLF/43/2020-2021	176,128.80
KWS/OT/RMLF/44/2020-2021	226,371.60
KWS/OT/RMLF/52/2020-2021	381,506.00
KWS/OT/RMLF/54/2017-2018	492,270.00
Total	3,044,206

222. The above rearrangement of items of work were done within the existing rates in the contract and did not exceed the contract sum.

### **Observations and Findings of the Committee**

223. The Committee observed that:

- i. The Fund's contractors made provisions for contingencies amounting to Kshs.40,821,578 which were paid during the year under review however, the contract variation and amendments were neither reviewed by an evaluation committee/Accounting Officer nor submitted through the Head of Procurement;
- ii. Management was in breach of Regulation 132 (1) and (2) of the Public Procurement and Asset Disposal Regulations, 2020; and
- iii. The matter remained unresolved.

### **Recommendations of the Committee**

224. The Committee recommends that:

- i. The Accounting Officer must ensure that the resources of the Service are used in a way that is lawful and authorized and effective, efficient, economical and transparent in compliance with section 68(1) of the PFM Act 2012.
- ii. The Accounting Officer must at all times ensure that all applicable accounting and Financial control systems, standards laws and procedures are followed when procuring or disposing of goods and services in compliance with section 68(2) of the PFM Act 2012.

#### **c. Irregular Evaluation of Tender**

225. As disclosed in Note 3 to the financial statements, the statement of financial performance reflects certified works amount of Kshs.801,351,143. Included in the amount is a payment of Kshs.22,852,288 to a contractor for routine maintenance of certain roads in Ruma National Park. The tender for purchase of routine maintenance of certain roads in Ruma National Park was advertised on MyGov publication on 28 September 2021. Four (4) bidders submitted their bids, two (2) bidders proceeded to technical and financial evaluation stages and a construction company were recommended for the award vide letter of notification of award dated 21 December 2021 at a winning bid price of Kshs.22,852,287.

226. The contractor accepted the offer and a contract signed on 14 January 2022. However, the following anomalies were noted:

- i. The winning bidder did not give the correct information with regards to litigation history in his bid documents which was a requirement. The bidder had an active court case at the Tax Appeals Tribunal under Appeal Number 132 of 2021 with regards to a tax arrears dispute with the Kenya Revenue Authority. In addition, the bidder submitted a bid document that was not well paginated which was a preliminary criterion. These two observations would have rendered the bidder; and non-responsive at the preliminary evaluation stage.

The contract awarded was not reported to the Authority as required under Regulation 60 of the Public Procurement and Asset Disposal Regulations, 2020. neither was the contract details

uploaded into the Public Authority website as required under Section 138(1-3) of the Public Procurement and Asset Disposal Act, 2015. In the circumstances, Management was in breach of the law.

#### **Submissions by the Accounting Officer**

227. The Accounting Officer submitted that the committee depended on the bidder's response regarding litigation, which was confirmed through a power of attorney as an instruction for the tender process. He further elaborated that the absence of a procurement system had impeded the reporting and uploading of awarded contracts. The Service was collaborating with the National Treasury for the installation of IFMIS.

228. He further submitted that despite this challenge, quarterly reports containing the list of awarded contracts were prepared and submitted to the Authority and confirmed that the contracts are published on the KWS website.

#### **Observations and Findings of the Committee**

229. The Committee observed that;

- i. The management did not undertake comprehensive due diligence and awarded a contract to a bidder who had an active court case at the Tax Appeals Tribunal under Appeal Number 132 of 2021 with regard to a tax arrears dispute with the Kenya Revenue Authority;
- ii. The contract awarded was not reported to the Authority as required under Regulation 60 of the Public Procurement and Asset Disposal Regulations 2020.
- iii. The management was in breach of the law.
- iv. The matter is unresolved.

#### **Recommendations of the Committee**

230. The Committee recommends that:

- i. The Accounting Officer must ensure that all applicable accounting and financial controls, systems, standards, laws and procedures are followed when procuring or disposing of goods and services in compliance with section 68(2)(e) of the Public Finance Management Act, 2012.
- ii. Within three months upon adoption of this report, the Public Procurement and Asset Disposal Authority to initiate investigation under section 35 of the Public Procurement and Asset Disposal Act, into the procurement and contract signed on 14 January 2022.

#### **d. Non-Rotation of the Ad Hoc Evaluation Committees**

231. A review of the various procurement processes for the certified works undertaken by the Fund during the year revealed that, the members of the Ad Hoc Evaluation Committees were not appointed on rotational basis since the same members evaluated very many tenders relating to the Fund over the course of the two (2) financial years without being rotated as summarized below:

Tender Number Evaluation Committee	Evaluation Committee	Date of Appointment
KWS/OT/RMLF/06-30/2020-2021	Edwin Wanyonyi-Chair, Walter Ochieng-Member, Micah Aiyabei-Member and Peter Mathenge-Member	4 December, 2020
KWS/OT/RMLF/42,43&44/2020-2021	Edwin Wanyonyi-Chair, Walter Ochieng-Member, Micah Aiyabei-Member and Peter Mathenge-Member	8 March, 2021
KWS/OT/RMLF/50,51,52/2020-2021	Edwin Wanyonyi-Chair, Walter Ochieng-Member, Micah Aiyabei-Member and Peter Mathenge-Member	15 June, 2021
KWS/OT/RMLF/04-21/2021-2022	Edwin Wanyonyi-Chair, Walter Ochieng-Member, Micah Aiyabei-Member and Peter	28 October, 2021

232. This is contrary to Regulation 29(1)(a) of the Public Procurement and Asset Disposal Regulations, 2020 which states that, the ad hoc evaluation committee established and appointed under Regulation 28 of these Regulations shall consists of at least three (3) members appointed on rotational basis comprising heads of user departments or their representatives. In the circumstances, the Management was in breach of the law.

#### **Submissions by the Accounting Officer**

233. The Accounting Officer submitted that as mandated by Section 46(1) of the Act, the Service appointed an evaluation committee from the existing staff, incorporating individuals with the necessary expertise. The committee consisted of a chairman at the director level, a deputy director (Corporate Service) from the user department, a technical officer from the department (Roads), and the Head of Finance, all possessing the requisite expertise in the relevant procurement field.

234. He further submitted that committee members did not participate in any other procurement processes conducted by KWS during the specified period. He acknowledged that the

management acknowledged the recommendation and commits to ensuring compliance with this requirement in future appointments of evaluation committees.

### **Observations and Findings of the Committee**

235. The Committee observed that;

- i. The members of the Ad Hoc Evaluation Committees were not appointed on rotational basis over the course of the two (2) financial years contrary to the Public Procurement and Asset Disposal Regulations, 2020;
- ii. The matter is unresolved.

### **Recommendations of the Committee**

236. The Committee recommends that;

- i. The Accounting Officer must always comply with the provisions of Regulation 29 of the Public Procurement and Asset Disposal Regulations in appointing members of the ad hoc evaluation committee.
- ii. Within three months upon the adoption of this report, the Public Procurement and Asset Disposal Authority to initiate investigation under section 35 of the Public Procurement and Asset Disposal Act, into the matter.

#### **e. Anomalies in Tarmacking of 22 Kilometers Road at Amboseli National Park**

237. The Management awarded two (2) Contracts to carry out road works on twenty-two (22) kilometers Tarmac Road where each contractor was awarded 11kms. The first Contract agreement was entered into between Kenya Wildlife Service and a construction firm on 17<sup>th</sup> September 2021 for rehabilitation of Kimana Gate-Ngong VEG Farm (Road C103)/Kimana Gate-Amboseli Headquarters 11kms Road at a contract sum of Kshs.105,283,708 with a contract period of six (6) months. The second contract agreement was entered into between Kenya Wildlife Service and a Construction Company on 7 October 2021 to carry out rehabilitation of 11km of Ngong VEG Farm Gate Kimana JUNCT (Road C103) at a contract sum of Kshs.72,554,632 with a contract period of six (6) months.

238. However, the following anomalies were noted:

- i) Although the two sections of the roads are equal (11Km), the contract sum for each section was different. However, the Management has not explained the reasons for the variance of Kshs.32,729,076 in the contract sums for the roads. Audit inspection carried out during the month of July, 2022 observed that the construction works were not yet completed despite the expiry of six (6) months period stipulated in the contract;
  - ii) Further, the road diversions had a lot of dust as there was either very little or no water poured on the diversions, hence posing healthy risks to the tourists using the road to visit the park; and
  - iii) The Management did not provide approval documents to confirm contract extension.
239. In the circumstances, value for money may not have been derived from the two projects.

### **Submissions by the Accounting Officer**

240. The Accounting Officer submitted that the above difference of Kshs.32,729,076 emanating from the comparison of the two contract sums was due to:

- a) He verified that the existing site conditions were varying along the longitudinal profile of the road from KM 0+000 TO KM 22+000. He also stated the specific needs on the various sections along the road informed their scope of works. Along Kimana gate - Ngong Veg Farm, the road profile was low and needed to be raised to avoid being washed off during the rains. He also added that this section of the road is in the low-lying region of Amboseli National Park and massive drainage work had to be carried out in this section. (Contracts were lotted into two different tenders with dissimilar site conditions). He therefore explained that each had a difference in quantities as per the bill of quantities. He noted that the Employer's budget for the two contracts as indicated in tender document page 21 (for both tenders were also different. He also stated that this declaration was known to all bidders during the tendering process.
- b) The rates for each item of work quoted by the two contractors were different.
- c) The other notable difference, was the supervision vehicle, attendance to resident Engineer's staff loaded on contract no KWS/OT/RMLF/50/2020-2021 as summarized in the table below:

S/ N o	Description	CONTRACT No. KWS/OT/RMLF/50/2020 -2021	CONTRACT No. KWS/OT/RMLF/ 51/2020-2021	Remarks
1.	Contract Name	Rehabilitation of Kimana Gate-Ngong Veg Farm (Road C103)/Kimana Gate Amboseli Park Head quarters	Rehabilitation of Ngong Veg Farm Gate-Kimana Junct (Road C103)	
2.	2 Employer's Budget (KES)	120,000,000.00	100,000,000.00	The Employer's budget for the two contracts as indicated in tender document page 21 (Appendix to Instruction to bidders) for both tenders was also different. See Annex VIII

3.	Contract Sum(KES)	105,283,708.99	72,554,632.65	
<b>Selected Major Differences in Scope of items of Work</b>				
4.	Contract Length(KM)	13.3	10.8	
5.	Tarmac length (KM)	11	10.8	
6	Gravelling Length (KM)	2.3	Nil	
7	Earthworks Quantities (M3)	13,608	8,748	Contract No. KWS/OT/RMLF/50/2020-2021 required more fill to raise the existing road profile than contract KWS/OT/RMLF/51/2020-2021
8	Protection works using gabions	640	1,240	Contract No. KWS/OT/RMLF/50/2020-2021 was located at a low lying area experiencing drainage issues as opposed to Contract No. KWS/OT/RMLF/51/2020-2021

### Observations and Findings of the Committee

241. The Committee observed that:
- i. The difference between the Kshs.32, 729,076 emanating from the comparison of the two contract sums was due to the varying scope of works for the two sections of the road in which the Auditor General verified.
  - ii. The two contracts of Kimana Gate-Ngong VEG Farm (Road C103)/Kimana Gate-Amboseli Headquarters and Ngong VEG Farm Gate Kimana JUNCT (Road C103) were complete and are in use.
  - iii. Management did not provide documentary evidence of approval for the extension of the contract
  - iv. The matter is partially resolved.

### **Recommendations**

The Committee recommends that—

Within three months upon the adoption of this report, the Accounting Officer to provide documentary evidence of the approval for extension of the contract and the effect of the extension to the contract sum to the Auditor General for verification.

#### **f. Budget Over-Expenditure**

242. The statement of comparative budget and actual amounts reflects total budgeted expenditure of Kshs.651, 338,776 against actual expenditure of Kshs.830,231,819 resulting in over- expenditure of Kshs.178,893,043 or 127% of the total budget. The Fund operated over and above the approved budget for the year contrary to the Appropriation Act, 2018, the Supplementary Appropriation Act, 2018 and Regulation 43(b) of the Public Finance Management (National Government) Regulations, 2015.
243. In the circumstances, Management was in breach of the law.

### **Submissions by the Accounting Officer**

244. The Accounting Officer submitted that a total expenditure of Kshs. 830,231,819, comprised of Kshs. 801,351,143.47 allocated to road works and Kshs. 28,880,676 designated for administrative activities during the reviewed year. He explained that within the sum, Kshs. 459,249,477.13 represented funds carried-over for ongoing projects, with certificates finalized for payment in the same period. He clarified that Kshs. 370,982,342 accounted for the actual works and administrative tasks conducted during the reviewed year, funded from the budget of Kshs. 651,338,776 for the financial year 2021/2022.

### **Observations of the Committee**

245. The Committee observed that;
- i. Management overspent Kshs. 178,893,043 or 127% of the total budget allocation of Kshs.651, 338,776 in contravention of Regulation 43(b) of the Public Finance Management (National Government) Regulations, 2015.
  - ii. Kshs.459, 249,477.13 was relating to brought forward funds for ongoing works whose certificates crystalized for payment during the year under review.
  - iii. The matter is unresolved.

### **Recommendations of the Committee**

246. The Committee recommends that;

- i. Within three months upon the adoption of this report, the Accounting Officer to provide a list of all projects of the previous year and current year that rolled over to the Auditor General for audit verification; and
- ii. The Accounting Officer must ensure that all applicable accounting and financial controls, systems, standards, laws, and procedures are followed in the preparation of the financial statements in compliance with Public Finance Management Act, 2012 and in accordance with the standards prescribed by the Public Sector Accounting Standards Board as per Regulation 101(4) of the Public Finance Management (National Government) Regulations, 2015.

## **REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE**

### **g. Non-Maintenance of an Imprest Register**

247. The statement of financial performance reflects amount of Kshs.28,880,676 in respect of other roadworks expenses as disclosed in Note 4 to the financial statements. Included in the expenditure is an amount of Kshs.10,105,175 which was incurred on domestic travel and subsistence. However, no imprest register was provided for audit review.

248. This is contrary to Regulation 93(4, c) of the Public Finance Management (National Government) Regulations, 2015 which requires the Accounting Officer to ensure that the applicant of the temporary imprest has been recorded in the imprest register including the amount applied for. In the circumstances, effective management of imprest register could not be confirmed.

### **Submissions by the Accounting Officer**

249. The Accounting Officer submitted that management oversees the maintenance of both soft and manual Imprest registers. He confirmed that the soft copy has since been updated and was ready for audit verification. He also stated the new guidelines on imprest management, aimed at addressing any shortcomings, had been introduced and implemented by management through a circular dated May 31, 2023.

### **Observations of the Committee**

250. The Committee observed that;

- i. An imprest register was not provided for audit review and hence, an amount of Kshs. 10,105,175 issued as imprest was not verified.
- ii. Management has prepared a soft copy of the Imprest register which was not verified.
- iii. The matter is unresolved.

### **Recommendations of the Committee**

251. The Committee recommends that:

- i. Within three months upon the adoption of this report, the Accounting Officer must submit the updated imprest register and supporting documentation relating to Kshs.10,105,175 to the Auditor General for audit verification;
- ii. The Accounting Officer must comply with the provisions Regulation 93(4) of the Public Finance Management (National Government) Regulations, 2015 which requires that the applicant of the temporary imprest should be recorded in the imprest register including the amount applied for; and
- iii. The Accounting Officer must ensure that all applicable accounting and financial controls, systems, standards, laws, and procedures are followed in the preparation of the financial statements in compliance with Public Finance Management Act, 2012 and in accordance with the standards prescribed by the Public Sector Accounting Standards Board as per Regulation 101(4) of the Public Finance Management (National Government) Regulations, 2015.

#### **h. Irregularities in the Management of Temporary Imprest**

**252.** The statement of financial performance reflects amount of Kshs.28,880,676 in respect of other roadworks expenses as disclosed in Note 4 to the financial statements which includes domestic travel and subsistence amount of Kshs.10,105,175. Included in the expenditure is an amount of Kshs.5,042,380 irregularly paid out to officers in form of group temporary imprest. This is contrary to Regulation 91(2) of Public Finance Management (National Government) Regulations, 2015 on Management of imprest which provides for issue of imprest to individual and not to a group.

**253.** Further, it was also not possible to confirm whether each officer individually accounted for the imprests received as required by Regulation 93(5) of the Public Finance Management (National Government) Regulations, 2015. In addition, there was no evidence to show that the officers received the imprests as some officers did not sign on the payment schedules attached to the vouchers. In the circumstances, efficient and effective controls in management of temporary imprest could not be confirmed.

#### **Submissions by the Accounting Officer**

254. The Accounting Officer submitted that the imprests underwent proper processing, approval, authorization, and utilization for their designated purposes. He clarified that individual officers also sign payment vouchers as acknowledgment of receiving the funds. He stated the new guidelines for imprest management, aimed at rectifying any deficiencies, had been introduced and implemented by management. He further confirmed that these guidelines are detailed in a circular dated May 31, 2023.

#### **Observations of the Committee**

255. The Committee observed that;

- i. Management issued and paid imprest of Kshs. 5,042,380 to officers as group temporary imprest instead of being paid to individuals, contrary to Regulation 93(12) of the PFM National Government Regulations, 2015.
- ii. The matter is unresolved.

#### **Recommendations of the Committee**

256. The Committee recommends that;  
The Accounting Officer must comply with Regulation 93(12) of the PFM National Government Regulations, 2015 when issuing imprest.

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 14 AUG 2024	DAY: WEDNESDAY
TABLED BY:	HON. RAHIM DAWOOD, MP VICE-CHAIR-SPECIAL FUNDS
CLERK-AT THE-TABLE:	ECATHER NAINTO

**THIRTEENTH PARLIAMENT – THIRD SESSION**


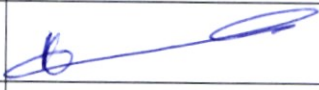



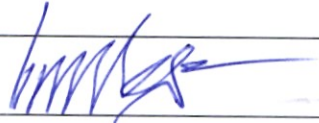


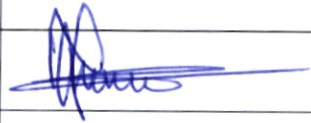

**THE NATIONAL ASSEMBLY**

**SPECIAL FUNDS ACCOUNTS COMMITTEE.**

**ADOPTION LIST FOR THE**

**NINTH REPORT ON AUDITED FINANCIAL STATEMENTS FOR  
THE ROAD MAINTENANCE LEVY FUND:**

1. Kenya National Highways Authority	-	2020/2021 and 2021/2022
2. Kenya Rural Roads Authority	-	2020/2021 and 2021/2022
3. Kenya Urban Roads Authority	-	2020/2021 and 2021/2022
4. Kenya Wildlife Services	-	2020/2021 and 2021/2022

NO.	NAME	SIGNATURE
1.	Hon. Fatuma Zainab Mohammed, MP - <b>Chairperson</b>	
2.	Hon. Dawood Abdul Rahim, HSC, MP - <b>Vice-Chairperson</b>	
3.	Hon. Charles Ngusya Nguna, MP	
4.	Hon. Dr. Christine Ombaka Oduor, MP	
5.	Hon. Erastus Kivasu Nzioka, MP	
6.	Hon. Eve Akinyi Obara, MP	
7.	Hon. Faith Wairimu Gitau, MP	
8.	Hon. Joseph Majimbo Kalasinga, MP	
9.	Hon. Tom Mboya Odege, MP	
10.	Hon. Catherine Nakhabi Omanyu, MP	
11.	Hon. Cecilia Asinyen Ngitit, MP	
12.	Hon. Erick Wamubi MP	
13.	Hon. Joseph Kimutai Cherorot, MP	
14.	Hon. Joshua Odongo Oron, MP	
15.	Hon. Paul Biego Kibichy, MP	

**MINUTES OF THE 66<sup>TH</sup> SITTING OF THE SPECIAL FUND ACCOUNTS COMMITTEE  
HELD ON WEDNESDAY, 22<sup>ND</sup> NOVEMBER 2023, IN CONTINENTAL HOUSE 5<sup>TH</sup>  
FLOOR, PARLIAMENT BUILDINGS AT 09.00 A.M.**

---

**PRESENT**

1. Hon. Fatuma Zainab Mohammed, MP - Chairperson
2. Hon. Dawood Abdul Rahim, HSC, MP - Vice Chairperson
3. Hon. Eve Akinyi Obara, MP
4. Hon. Charles Ngusya Nguna, MP
5. Hon. Catherine Nakhabi Omanyoo, MP
6. Hon. Erastus Kivasu Nzioka, MP
7. Hon. Tom Mboya Odege, MP
8. Hon. Joseph Kimutai Cherorot, MP
9. Hon. Dr. Christine Ombaka Oduor, MP
10. Hon. Paul Kibichi Biego, MP
11. Hon. Cecilia Asinyen Ngigit, MP

**APOLOGIES**

1. Hon. Joshua Odongo Oron, MP
2. Hon. Kahugu Erick Mwangi, MP
3. Hon. Faith Wairimu Gitau, MP
4. Hon. Joseph Majimbo Kalasinga, MP

**IN ATTENDANCE**

**OFFICE OF THE AUDITOR GENERAL**

1. Mr. David Osiemo - Auditor/Parliamentary Liaison Officer
2. Mr. James M Njeru - Deputy Director OAG
3. Mr. Damianess O Oyacho - Principal Auditor

**THE NATIONAL TREASURY**

1. Mr. Lawrence Kwiriga - TNA SNR ACCTS

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Leonard Machira - Principal Clerk Assistant II
2. Mr. Silvanus Makau - Clerk Assistant III
3. Ms. Comfort Achieng - Clerk Assistant III
4. Mr. Benard Omondi - Sargent at arms
5. Mr. Peter Mutethia - Audio Officer III
6. Ms. Pauline Sifuma - Hansard Reporter

## **ROAD MAINTENANCE LEVY FUND (KENHA)**

1. Eng. Kung'u Ndung'u - Director General
2. Eng. Daniel S Cheron - Director Maintenance
3. Mr. Stephen Ngang'a - Assistant Director Finance
4. Mr. Samuel Gatiba - Senior Accountant
5. Mr. James Bowan - RMLF (KENHA)

**MIN. NA/AA&SC-SFAC/2023/026:**

### **PRELIMINARIES**

The Chairperson called the meeting to order at 09.35 a.m., followed by a word of prayer and introductions.

The following agenda was adopted as circulated:

1. Prayers
2. Preliminaries/Introductions
3. **Examination of the Audited Financial Statements of the Road Maintenance Levy Fund (KENHA) for the financial years 2020/2021 and 2021/2022**
4. Any Other Business
5. Adjournment Date of the next meeting.

After that, Eng. Kung'u Ndung'u Director General, Kenya National Highways Authority took the witness oath and tabled the Management responses and supporting documents on the audited accounts of the Road Maintenance Levy Fund, (KENHA), for Financial Years 2020/2021 and 2021/2022.

**MIN. NA/AA&SC-SFAC/2023/027:**

### **EXAMINATION OF THE AUDITED FINANCIAL STATEMENTS OF THE ROAD MAINTENANCE LEVY FUND (KENHA) FOR THE FINANCIAL YEARS 2020/2021 AND 2021/2022**

#### **Road Maintenance Levy Fund (KENHA) for the Financial Year 2020/2021**

##### **1. Unsupported Cash and Cash Equivalents**

The statement of financial position reflected cash and cash equivalents balance of Kshs 10,197,835,027. The balance included a call deposit balance of Kshs 981,255,555, for which a bank reconciliation statement was not provided for audit.

##### **Submissions by the Accounting Officer**

The Authority places not-immediately-required funds in high-yielding call deposits in line with the National Treasury Circular No. 4/2017. Considering this guideline, the Authority placed Kshs 1,500,000,000 in the Co-operative Bank Call deposit account, out of which Kshs 981,255,555 was from Fuel Levy Fund awaiting payment for certified work done by Contractors.

A certificate of bank balance of Kshs 1,500,000,000 from the Co-operative Bank call deposit account as at 30<sup>th</sup> June 2021 was provided to the Auditor.

#### **Findings and Observations of the Committee**

The Auditor informed the Committee that the matter was addressed since the bank certificate for cooperative Bank call-deposit account had been provided and verified.

#### **2. Variance in Development Project Expenses**

The statement of Financial Performance reflected development projects expenses amount of Kshs 2,074,878,851. However, Kenya Roads Board records reflected Kshs 2,100,000,000 for the same resulting in an unexplained and unreconciled variance of Kshs 25,121,149.

#### **Submissions by the Accounting Officer**

The amount of Kshs 25,121,149 was not received by the Authority from KRB. The Authority could only account for the funds received by itself.

#### **Findings and Observations of the Committee**

- i. The Auditor informed the Committee that the matter was partially resolved since the Authority had fully accounted for Kshs.2,074,878,851 they received from KRB but the unreconciled balance of Kshs.25,121,149 was still not addressed.
- ii. The Accounting Officer was instructed to reconcile with the Ministry and to subsequently submit the relevant documents to the Auditors for verification.

#### **3. Budgetary control and Performance**

The statement of comparison of budget and actual amounts reflected actual expenditure on Kshs 21,686,652,587 against a budgeted amount of Kshs 29,039,333,029 resulting in under-absorption of Kshs 7,352,679,442 or 25% of the budget which affected the planned activities and may have impacted negatively on service delivery to the public.

#### **Submissions by the Accounting Officer**

This scenario resulted from delayed commencement of some maintenance projects resulting from contractors' delayed submission of Performance Bonds and All Risk Insurance policies. However, most of the contractors who delayed commencing works expedited maintenance works during the financial year with the intention of recovering lost time. The underspent amount of Kshs. 7,352,679,442 as indicated above was fully absorbed by the respective projects within the 1st quarter of FY 2021/2022.

#### **Findings and Observations of the Committee**

The Auditor informed the Committee that the matter was addressed since the amount was absorbed in the subsequent year.

## **Road Maintenance Levy Fund (KENHA) for the Financial Year 2021/2022**

### **1. Unreconciled Difference between Unpaid Projects Amounts and Cash and Cash Equivalents Balance.**

The fund had an approved budget of Kshs.28,266,494,344 covering 462 road projects for the year ended 30 June, 2022. The budget was fully funded by the Kenya Roads Board during the year. Further review indicates that payments totalling Kshs.25,408,126,383 were made for work done, leaving an unpaid balance of Kshs.2,858,367,961 as of 30 June 2022. However, the statement of financial position reflects a cash and cash equivalents balance of Kshs.1,707,746,685, which is less than the unpaid balance of Kshs.2,858,367,961. The difference of Kshs.1,150,621,276 had not been reconciled.

#### **Submissions by the Accounting Officer**

The cash at Bank amounting to Kshs.1,707,746,685 was the result of receipts net of payments, whereas the carry-over balance of Kshs.2,858,367,961 was the approved budgeted resources for road maintenance works that had not been absorbed as at 30th June 2022. The Authority accrues its expenses and recognizes them in its accounts as expenditures even if not yet paid, as opposed to cash accounting, which only recognizes expenses once paid. In this regard, unabsorbed resources will not equal the cash in the bank.

#### **Findings and Observations of the Committee**

The Auditor informed the Committee that the matter was addressed since the Authority uses an accrual reporting framework. The Kshs.2,858,367,961 was part of receivables from KRB.

### **2. Road Maintenance Levy Fund**

The statement of financial performance as disclosed in note 1 to financial statements, reflected funds received from Kenya Roads Board (KRB) amounting to Kshs 32,373,684,084. However, records maintained by Kenya Roads Boards reflect disbursements totalling Kshs 44,342,887,917, resulting in a variance of Kshs 11,969,203,833, which was not reconciled or explained.

#### **Submissions by the Accounting Officer**

The above amount of Kshs. 32,373,684,084, reflected in the Authority's books, was arrived at after considering reliable documents from the Kenya Roads Board in line with Accounting for Government Grants as contained in International Public Sector Accounting Standards. The Authority is not aware of the alleged Kshs. 44,342,887,917 recorded in the Board's books neither was the Kshs. 44,342,887,917 disbursed to the Authority in the financial year ended 30<sup>th</sup> June 2022.

The Authority received a total of Kshs. 32,373,684,084 from KRB through the State Department for Infrastructure being RMLF for FY 2021/2022

#### **Observations of the Committee**

- i. The Committee requested the auditor to communicate with the Kenya Roads Board to verify the veracity of the 11 billion.
- ii. The Auditor informed the Committee that the matter was partially resolved since the Authority had fully supported the Receipts of Kshs.32,373,684,084, but the variance of Kshs.11,969,203833 between KRB and KeNHA records was still unexplained/Unreconciled.

#### **3. Unauthorized Retention of Receipts.**

The statement of financial performance reflected finance income of Kshs.149,517,064 being interest earned from Road Maintenance Levy Fund (RMLF) funds and other income of Kshs.9,177,581 in respect to liquidated damages charged to various contractors, both totalling Kshs.158,694,645. However, the amounts were not appropriated in the Authority's budget, which is an indication that the revenue should have been surrendered to The National Treasury. No evidence indicated that the amount was surrendered to The National Treasury.

#### **Submissions by the Accounting Officer**

The interest income and liquidated damages were included in the Operations and Administration Budget for FY 2021/2022 which had provisions of Kshs. 870,000,000 and Kshs. 50,000,000 for Interest income for all bank accounts and other incomes, including liquidated damages for all projects.

The Operations & Administration Budget FY 2021/2022 was approved by the Authority's Board of Directors on 28<sup>th</sup> January 2021 and duly uploaded into the GIMIS platform on 17<sup>th</sup> February 2021.

#### **Observations of the Committee**

The Auditor informed the Committee that the matter was addressed since the authority provided the approved budget for the year incorporating the expected interest.

##### **a) Performance-Based Contract for Maintenance of Narok –Ngoswani (B131) Road**

- i. Performance Based Contract for Maintenance of Narok–Ngoswani (B131) road was awarded to a contractor vide contract No.KeNHA/RD/RA&CM/3360/2021 at a contract sum of Kshs.310,166,470 and was to commence on 16 August, 2021 for a period of 36
- ii. Progress status report as at 30 June, 2022 indicated 5.85% physical progress versus 31% elapsed time.
- iii. A physical inspection conducted in February 2023 indicated physical progress of 30.04% against 50.04% elapsed time, an indication that the project was behind schedule.

- iv. There was, however, no evidence of damages deductions from the contractor despite express authority vide Section 47.1 (b) of the particular conditions of the contract specifying that Kshs.50,000 per month per pothole will be deducted from the contractor as damages for not attending to potholes within 48 hours of excavation.

#### **Submissions by the Accounting Officer**

- i. There was a significant improvement in physical progress noted. As at 31<sup>st</sup> March, 2023, progress stood at 36% compared to 5.58% as at the date when the last notice of slow progress was issued. It was anticipated that if the Contractor continues with the same pace of work, they will be able to complete the works in time as provided for in the works contract.
- ii. The potholes were rectified by the Contractor, and the deductions for the initial non-compliance amounted to Kshs. 200,000 in line with clause 47.1 (b) of the Contract was applied in IPC No. 4. as liquidated damages.

#### **Observations of the Committee**

The Auditor informed the Committee that the matter was addressed since the latest project briefs indicated that the contractor had made noticeable progress in the implementation of the works and the Potholes had been sealed.

#### **b) Periodic Maintenance of Njoro- Mau Summit (B129)**

Periodic Maintenance of Njoro-Mau Summit (B129) was awarded vide contract No.KeNHA/RD/RA&CM/3396/2021. The works were to commence on 26 August 2021, with a completion date of 25 February 2023. Physical verification in February 2023 revealed 80.20% physical progress against 95.45% elapsed time, an indication that the project was behind schedule. The following observations were also made: The contractor had not done surface dressing works on 7 km and river training works, and the road shoulders in the Keringet area were being swept away and had not been repaired, though work was paid for and put into question the quality of shoulder works.

#### **Submissions by the Accounting Officer**

The contractor substantially completed the works on 24th February 2023, including the outstanding 7km of surface dressing. The contractor requested the project inspection. This process is done to all projects before the project takes over. To this end an Inspection & Acceptance Committee has been constituted to carry out this exercise and prepared their report for Management consideration.

### **Findings and Observations of the Committee**

The Auditor informed the Committee that the matter was addressed since the contractor had substantially completed the project and inspection done.

#### **c) Performance Based Contract for Maintenance of Junction (B89) Madogo (B89)-Modika (A3) Road**

- (i) There were no signs that the contractor was on site,
- (ii) There were blocked culverts especially in Garissa Town while works was still incomplete.
- (iii) Drainage has dumped garbage and overgrown vegetation,
- (iv) Most road signs had been vandalised,
- (v) De-siltation of drainage and culverts as detailed on the contract was not done in Garissa Town,
- (vi) Between the main bridge separating Garissa town towards Madogo, there is conspicuous and strong erosion of the roadside especially the road shoulders and the road reserves have undesirable overgrown vegetation which was supposed to have been cleared as per the contract.

### **Submissions by the Accounting Officer**

The Contract was terminated on 25th August 2022, and the Contractor was charged full liquidated damages of Kshs.5,971,017.84 and the balance of the contract sum of Kshs.47,334,974.96 went to the procurement of a new contract.

A new contract No. KeNHA/RD/RA&CM/3714/2022 (Lilaaf Construction Co. Ltd.) was procured and has addressed the outstanding project issues. Extracts of the contract No. KeNHA/RD/RA&CM/3714/2022

### **Findings and Observations of the Committee**

The Auditor informed the Committee that the matter was addressed since the authority had provided evidence of recovery of liquidated damages through IPC no.3 and the new contractor put in place. Substantial work had been done.

#### **d) Performance Based Contract for Maintenance of Junction B21 Nyeri-Othaya-C544 Kangema (B23) Road**

At the time of audit in February, 2023, it was noted that pot holes were observed on shoulders of some sections of the road, damaged guardrails were conspicuously seen.

litter along some sections of road drainage channels especially at around 33 Km, there was vegetation at around 41Km that had grown beyond the PBC height requirements, and some asphalt applied on some road pavement section was failing.

### **Submissions by the Accounting Officer**

- i. In line with the PBC contractual provisions and given that this is a very aged pavement, the Contractor had patched the noted and emerging potholes as well as the damaged guardrails, which is a continuous activity during the duration of the contract in the PBC context.
- ii. In the same PBC context, the littering cited at km 33 and vegetation at km 41 was addressed.
- iii. Penalties of **Kshs. 675,405.87** was levied for the noted non-compliance as provided for in the contract. Extracts of IPCs with deducted amounts were provided.

### **Findings and Observations of the Committee**

The Auditor informed the Committee that the matter was addressed since the authority provided evidence of recovery through deductions made on the contractor's measurement sheets.

#### **e) Performance Based Contract for Maintenance of JN B23/27 Othaya –JN A 2/B 27 Karatina (B27).**

Contract No. KeNHA/RD/RA&CM/2951/2020 was awarded to a contractor on 10 March, 2020 at a contract sum of Kshs.49,460,633.20 for 36 Months.

The contractor's all-risk insurance expiry date was expected on 18 June, 2023. The amount certified for payment as of 31 January 2023 was Kshs.44,418,053.64.

Physical verification in February 2023 revealed litter and silt in culverts at Karatina town.

### **Submissions by the Accounting Officer**

The culverts were cleared of all blockages. The project team had enhanced supervision to ensure that the contractor continuously cleared any culvert blockages that may arise during the current rainy season.

Regarding the contractors' All Risk insurance cover, Management was confident that the works would be completed before the expiry of the insurance cover on 18<sup>th</sup> June 2023

### **Observations of the Committee**

The Auditor informed the Committee that the matter was addressed.

#### **f) Performance-based Contract for Maintenance of JN A2 Karatina - Kagumo-Kutus (B27) Road.**

The contract was awarded on 29 September 2020 at a contract sum of Kshs.374,379,713. The date of order to commence was 4 December, 2020 with a completion period of 36 months.

The revised contract sum was Kshs.464,340,178.70, surpassing the original contract sum by Kshs.89,960,465.70 or 24%.

The amount certified as of the time of the progress report in the month of January 2023 was Kshs.341,534,226.96.

The expected completion date is 17 December 2023. The Management did not provide reasons for revising the contract price upwards. Further, in Kagumo town, some access culverts had overgrown vegetation that could not allow the free surface flow of rainwater.

#### **Submissions by the Accounting Officer**

The upward contract revision arose from the need to address the erratic failure witnessed on the road, which had threatened to cut off the road. The Employer approved the variation report detailing the noted failures and intervention measures required as per the copy of the variation order attached. The Contractor has since addressed the issue of overgrown grass. Additional instructions to the Contractor to ensure that he maintains grass height to the required standards as provided in the contract have been conveyed.

#### **Observations of the Committee**

The Auditor informed the Committee that the matter was addressed since the authority provided approved project price variation.

##### **g) Periodic Maintenance of Ruiri – Isiolo.**

For some road pavements, the contractor had used AC material that had failed to meet the minimum laboratory requirements for AC Type 1. The affected sections were Km 13+300 right-hand side and Km 15+220 to km 15+770.

The above-mentioned irregularity could negatively affect the quality of the affected road sections. Several road signs had been vandalized, and the contractor had not been issued with instructions to correct the works.

**Submissions by the Accounting Officer: The contractor requested an extension of time due to supply delays.** The merit of the request was evaluated and granted. In addition, the contractor cited a three-month break to allow workers to vote in the August 2022 General Election as another cause of delays for which he was entitled to a time extension.

The AC Type 1 used by the Contractor failed marginally in stability. The Contractor was informed that affected sections will be observed during the one-year Defects Liability Period (DLP). So far, the section is performing well.

#### **Observations of the Committee**

- i. The Authority had provided evidence of issuance of a correction order, but the suitability of the material was still awaiting the end of the defects liability period to be confirmed.
- ii. The Auditor informed the Committee that the issue was partially addressed.

#### **h) Performance-Based Contract for Maintenance of Machakos -Kangundo (B 105) Road.**

The contractor failed to meet the expected service levels as per the contract requirements. Both the inner and the outer vegetation had overgrown beyond the required service level between 150mm and 300mm respectively along the full road chainage. The drainage channels were clogged by overgrown grass and silt. At Km 16, two guardrails that had been detached by a road accident had remained unrepaired and the contractor was not on site.

#### **Submissions by the Accounting Officer**

The non-compliances noted were attributed to the Contractor's poor performance.

The contractor mobilized on-site and attended to all the issues raised under the close supervision of the REs Team. Further, necessary penalties in terms of deduction would be effected when the Contractor submits his next IPC.

#### **Findings and Observations of the Committee**

The Auditor informed the Committee that the matter was addressed since the Authority provided evidence that the contractor had attended to all the issues and provided evidence to that effect.

#### **i) Stage Improvement of Nyaru-Iten.**

Stage improvement of Nyaru-Iten works was awarded vide contract No. KeNHA/RD/M/2032/2016 at an original contract sum of Kshs.2,418,819,638.75 to commence on 14 November 2016 for 30 months with a completion date of 13 May 2019. Later, the works were varied from Kshs.526,630,775.47 to Kshs.2,945,450,414.22 to be completed on 31 March 2023. As of the time of verification in the month of February 2023, the certified works were Kshs.2,417,805,863 or 78.5% versus 98.56% elapsed time.

The project had pending bills totalling to Ksh.525,893,208 as at 30 June, 2022 with a risk of incurring additional interest costs and penalties due to delayed payments. The Resident Engineer vide letter dated 10 June 2022 recommended taking over the works as the contractor had substantially completed the works save for nominal non-permanent works. This would have avoided an extension of time as the remaining works would have been done during the defect's liability period. However, instead, the contractor was given an extension to complete the works by 31 March 2023.

#### **Submissions by the Accounting Officer**

A delay in paying interim payment certificates has led to excess costs to the project due to interests and taxes charged. Submissions by the Accounting Officer Stage Improvement of Nyaru-Iten was not a Fuel Levy Project and, therefore, should not have appeared in the Financial Statements for the Road Maintenance Levy Fund. The Project is fully funded by the Development budget.

Findings and Observations of the Committee The secretariat was assigned the responsibility of verifying whether the audit query fell within the committee's mandate and providing guidance before the committee proceeded to report writing.

**j) Performance-based contract for the Maintenance of JN A8 Eldoret-Kapsabet  
Contract Sum Kshs.337,252,990.41**

Review of documents provided for audit revealed that under summary of the bill of quantities, bill No.1, item 01-08-026A for payment of residential engineer's miscellaneous account reflected an amount of Kshs.1,922,337.50 which differed with the detailed analysis amount of Kshs.1,057,507.50, resulting in an unexplained variance of Kshs.864,830.

Similarly, bill No. 25, item no.25-56-003 for cross cutting issues reflected Kshs.3,513,001 and the attached appendix indicated an amount of Kshs.2,953,000 resulting in a variance of Kshs.560,001.

Physical verification carried out in February, 2023 revealed vandalized sign posts at Km 24+200, Km 26+200, Km 27+300 and Km 32, vandalized culvert and drainage works, waste along the drainages and at Km 25 and Km 35+10 the drainage was broken and not properly aligned, the guardrail at Km 31+200 is broken and the shoulders had been swept away at Km 21+300, Km 28 and Km 30-35+10.

**Submissions by the Accounting Officer**

- i. Items 01-80-026A and 25-56-003 of the Bill of Quantities were appraised to cater for critical work items under the contract.
- ii. Vandalism of road furniture and dumping of waste onto the drains had been a challenge along the Eldoret-Kapsabet road. The region planned to conduct sensitization forums at market centres along this road aimed at winning support among residents against this vice.
- iii. Shoulder reinstatement to bituminous standards was done under this contract between Km 10+100 – 18+600 & Km 25+900 – 27+340.

**Findings and Observations of the Committee**

The Auditor informed the Committee that the matter was partially resolved since a copy of the approved appraisal had been provided, but the issue of vandalism and waste dumping had not been addressed.

**k) Performance Based contract for the Maintenance of Busia-Malaba (B13) Road  
Contract Sum Kshs.270,869,947.80**

Verification of the project revealed the following;

- i. Side drains were filled with waste and sewer at 0+000 to 0+200BS,
- ii. Emerging pothole and surface wearing off at Km 9+500 and Km 23+600,

- iii. Delay in commencement of works for surface dressing chippings, yet the expected progress as per POW was 62.5%
- iv. Instruction 009 for the installation of bumps and rumble strips recorded the progress of work 100%, and the expected progress as per POW was 100%. However, no rumble strips had been installed at the time of the audit.
- v. Further, the summary of bill of quantities, bill No.1 for the item 01-50-020 for the purchase of office equipment at a total cost of Kshs.1,500,000 was not supported by a detailed appendix. Consequently, it was not possible to confirm which office equipment was to be purchased for this project.
- vi. In addition, under residents' engineer's office miscellaneous expenses, the following items were purchased and paid vide invoice order No.15 dated 15 February, 2022;
- vii. In addition, under residents' engineer's office miscellaneous expenses, the following items were purchased and paid vide invoice order No.15 dated 15 February, 2022

#### **Submissions by the Accounting Officer**

- i. The Region was in consultation with the relevant authorities in Busia County Government to address the challenge of sewage discharge into the open drains by the locals at km 0+000 to 0+200 LHS. The blocked side drains were, however, noted during the monthly formal inspection No. 12 of January 2023 and communicated to the Contractor vide letter Ref: KeNHA/R2/06. A/B13/3425/VOL.1/061 dated 6th February, 2023. Payment reductions had been made for the non-complying side drains section under Clause 2.6.1 of the Performance specifications.
- ii. The emerging potholes at km9+500 were noted during the monthly formal inspection No. 12 of January 2023 and communicated to the Contractor vide letter Ref: KeNHA/R2/06.A/B13/3425/VOL.1/061 dated 6th February, 2023. Payment reductions have since been made for the non-complying section under Clause 2.6.1 of the Performance specifications.
- iii.
- iv. Bill No. 1 item 01-50-020 (purchase of office equipment) is a PC sum. Usually, for PC sums, prior approval to expend the Bill item is sought from the Engineer with the details of what is to be purchased well described. At the time of the audit, the amount had not been expended; hence, no detailed appendix could be availed to the auditors.

#### **Observations of the Committee**

- i. The Accounting Officer was requested to provide the Auditors with proof of consultations conducted with stakeholders to clarify the issue.
- ii. The Auditor informed the Committee that the matter was partially addressed I) Delayed Works and Roads with Excess Length Review of project status for contracts totalling Kshs.14,452,666,851.45 with a length of 4,344.99 km revealed that 2,733.02 km had been

**MINUTES OF THE 67<sup>TH</sup> SITTING OF THE SPECIAL FUND ACCOUNTS COMMITTEE  
HELD ON THURSDAY, 23<sup>RD</sup> NOVEMBER 2023, IN EKA HOTEL AT 9.30AM.**

---

**PRESENT**

1. Hon. Fatuma Zainab Mohammed, MP - Chairperson
2. Hon. Dawood Abdul Rahim, HSC, MP - Vice Chairperson
3. Hon. Dr. Christine Ombaka Oduor, MP
4. Hon. Charles Ngusya Nguna, MP
5. Hon. Erastus Kivasu Nzioka, MP
6. Hon. Eve Akinyi Obara, MP
7. Hon. Tom Mboya Odege, MP
8. Hon. Catherine Nakhabi Omanyoo, MP
9. Hon. Cecilia Asinyen Ngitit, MP
10. Hon. Joseph Kimutai Cherorot, MP
11. Hon. Kahugu Erick Mwangi
12. Hon. Paul Kibichi Biego, MP

**APOLOGIES**

1. Hon. Faith Wairimu Gitau, MP
2. Hon. Joseph Majimbo Kalasinga, MP
3. Hon. Joshua Odongo Oron, MP

**IN ATTENDANCE**

**ROADS MAINTENANCE LEVY FUND-KWS**

1. Dr. Erustus Kanga - Director General
2. Mr. Peter Mathenge - Senior Accountant KWS
3. Prof. Charles Musyoki - Director of Parks and Reserves
4. Mr. Micah Aiyabel - Principal Superintendent of Roads
5. Mr. Johana Tonui - Principal Superintendent Accounts
6. Mr. Benard Mbeda - Ag. Director of Infrastructure & Facilities Management
7. Ms. Leah Nausia - Director of Supply Chain Management

**OFFICE OF THE AUDITOR-GENERAL**

1. Mr. Flouris Matheka - Deputy Director Audit
2. Mr. Elvis Amino - Auditor
3. Mr. Jeff Otieno - Auditor/Parliamentary Liaison Officer

## **NATIONAL ASSEMBLY SECRETARIAT**

- |                        |                                     |
|------------------------|-------------------------------------|
| 1. Mr. Leonard Machira | - Principal Clerk Assistant II      |
| 2. Ms. Comfort Achieng | - Clerk Assistant III               |
| 3. Mr. Silvanus Makau  | - Clerk Assistant III               |
| 4. Ms. Bevaline Mosoti | - Research Assistant III            |
| 5. Ms. Judith Kanyoko  | - Legal Counsel II                  |
| 6. Ms. Maryam Gabow    | - Public Communications Officer III |
| 7. Ms. Pauline sifuma  | - Hansard Reporter                  |
| 8. Mr. Peter Mutethia  | - Audio officer III                 |
| 9. Mr. Benard Omondi   | - Sergeant at arms                  |

### **MIN. NA/AA&SC-SFAC/2023/029:**

### **PRELIMINARIES**

The Chairperson called the meeting to order at 9.54am, followed by a word of prayer and introductions.

The following agenda was adopted as circulated:

1. Prayers
2. Preliminaries/Introductions
3. **Examination of the Auditor General Reports on Accounts of the Roads Maintenance Levy Fund-KWS for the Financial Years 2020/2021 and 2021/2022.**
4. Any Other Business
5. Adjournment Date of the next meeting.

After that, the Director General of Kenya Wildlife Service undertook the witness oath. He tabled the management responses and supporting documents on the audited accounts for the **Roads Maintenance Levy Fund-KWS** for the financial years 2020/2021 and 2021/2022.

### **MIN. NA/AA&SC-SFAC/2023/030:**

### **CONSIDERATION OF THE AUDIT REPORTS OF ROADS MAINTENANCE LEVY FUND-KWS FOR THE FINANCIAL YEARS 2020/2021 AND 2021/2022**

#### **Brief on the mandate and scope of the Fund**

The Accounting officer briefed the Committee on the operations and scope of the **Roads Maintenance Levy Fund-KWS**

#### **Examination of the Auditor General reports for Roads Maintenance Levy Fund-KWS for the financial year 2020/2021 and 2021/2022**

The Committee examined the Auditor General's report for the **Roads Maintenance Levy Fund-KWS** for the Financial year **2020/2021** and **2021/2022** as follows:

## **Financial Year 2020/2021**

### **1. Retention Monies not Held in a Separate Account**

Management did not maintain a separate bank account for deposits and payments of retention monies, and instead, the Fund used an operations account, which is in the name of Kenya Wildlife Service. The retention monies may not be available to pay contractors as and when claims for retention are presented for payment.

The schedule of retention monies includes unpaid retention monies amounting to Kshs.213,605, which are over five (5) years old.

#### **Management response**

The Accounting Officer submitted that the Management did not maintain a separate bank account for deposits and payments of retention monies, and instead, the Fund used an operations account, which is in the name of Kenya Wildlife Service. He stated that the retention monies may not be available to pay contractors as and when claims for retention are presented for payment.

He noted that the schedule of retention monies includes unpaid retention monies amounting to Kshs.213,605, which are over five (5) years old.

#### **Committee observation**

The Committee noted that the matter was addressed.

### **2. Variances in Road Maintenance Levy Fund**

The statement of financial performance reflects road maintenance levy fund amount of Kshs.871,051,487 which is at variance with the road maintenance levy fund amount of Kshs.721,507,377 reflected in the statement of comparison of budget and the actual amount by the unexplained variance of Kshs.149,544,111.

#### **Management response**

The Accounting officer submitted that during the financial year 2020/2021, the annual budget allocation for the KRB project was Kshs.871,051,488. He stated that the actual amount received from KRB during the year was Kshs.721,507,377, and the balance of Ksh.149,544,111 was accrued as receivable and later remitted to KWS on 7th July 2021.

#### **Committee observation**

The Committee noted that the matter was addressed.

### **3. Budget Over Expenditure**

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on a comparable basis of Kshs.871,051,488 and Kshs.753,936,800 respectively, resulting in an under-funding of Kshs.117,114,688 or 13% of the budget.

The Fund spent Kshs.1,284,062,760 against an approved budget of Kshs.871,051,488, resulting in an over-expenditure of Kshs.413,011,272 or 147% of the budget. The work plan for 2019/2020 with an approved budget of Kshs.669,668,404 was implemented in the current financial period of 2020/2021.

Therefore, the Fund could not absorb all the funds meant for the year under review, as there were pending projects for 2019/2020 that were given priority.

#### **Management Response**

The Accounting Officer submitted that during the financial year 2020/2021 the annual approved budget allocation for KRB project was Kshs.871,051,488. He stated the amount received from KRB during the year was Kshs.721,507,377, and the balance of Ksh.149,544,111 was accrued as receivable and later remitted to KWS on 7th July 2021.

He further noted KRB bank account earned an accumulated interest of Kshs. 32,429,423.00; hence, the total receipt for the year amounted to Kshs.753,936,800. (Ksh.721,507,377 + Ksh.32,429,423).

He stated that the total expenditure for the financial year under review was Kshs.1,284,062,760. When compared with the budgeted amount of Kshs.871,051,488, there is a variance of Kshs.413,011,272. which represents the payments concerning rollover projects relating to the three (3) year PBC contracts that were awarded in 2015/2016 and were still ongoing and whose payments were done during the financial year under audit 2020/2021.

#### **Committee observation**

The Committee noted that the matter was partially addressed as management had under-absorbed the budget.

### **4. Delay in Completion of Projects**

The ongoing works of Kshs.66,170,333 or 36% for two (2) projects awarded in the 2015/2016 financial year. At the time of the audit in June 2022, the percentage completion of the two (2) projects was at 75% and 72%, respectively.

#### **Management Response**

The Accounting Officer submitted that the two contracts KWS/OT/PBC/R&F/18/2015-2016- Rehabilitation and Performance Based Routine Maintenance of Old Murera Gate-Kindani-Junct 22 In Meru National Park and KWS/OT/PBC/R&F/20/2015-2016- Rehabilitation and Performance-based routine maintenance of Elephant platform Kambi Mtamaiywa circuit road in Mt. Elgon National Park were awarded in FY 2015-2016 with their commencement date being 9th May 2016 and contract period of 42 Months.

The works were hybrid PBC (Rehabilitation and PBC), with their execution period spanning three financial years. He stated that during their rehabilitation phase, the two-faced challenges ranged from the effect of unforeseen adverse weather conditions to the inflation of prices of basic items for major works.

He also noted that the challenges resulted in the delays of delivery of works leading to variations of the contract period for delivery of tasks and contract amount. Contract number KWS/OT/PBC/R&F/20/2015-2016 was successfully finished on 29th September 2021, and the final payment made on 10th October 2021. See attached completion certificate. Annex II

He noted that the other contract, KWS/OT/PBC/ R&F /18/2015-2016, was completed in February 2022 with some rehabilitation works (two bridges worth KES 10,560,515.85) omitted from the initial contract sum because of the contractor requesting exclusion of the item from the works.

He explained that the omission was necessitated by the increase in the scope of the planned works due to the wash-off of the bridge by flash floods during implementation and the inflation of steel prices, which was the main component of the bridge works.

In conclusion, he stated that the pending works were re-advertised in FY 2022/2023 and are ongoing.

#### **Committee observation**

The Committee noted that the matter was not addressed.

The Committee requested the Management to provide the contractors' correspondence contract documents and payment certificates within seven days.

#### **5. Lack of a Disaster Recovery Plan**

The Fund did not have a Disaster Recovery Plan that details recovery procedures in place that may lead to serious organizational and institutional memory which may lead to loss of crucial data and information in case of disaster.

#### **Management Response**

The Accounting Officer submitted that the Service has a risk management policy which covers all the organization's functions including any projects being undertaken. A copy of the approved risk management policy is attached for your review.

#### **Committee observation**

The Committee noted that the matter was not addressed as there was no time limit provided to complete the recovery plan.

## **Financial Year 2021/2022**

### **1. Unsupported Projects' Expenditure**

Ongoing projects awarded in the 2015/2016 financial year. Annex 1 to the financial statements for 2021/2022 does not reflect the project's status, and no project completion certificates were provided for audit.

The financial statements for 2021/2022 contain six (6) projects awarded in 2020/2021 totalling Kshs.114,658,008 or 35% of the total outstanding uncertified projects with completion percentages of between 40% and 92%.

### **Management Response**

The Accounting Officer submitted that the two contracts, KWS/OT/PBC/R&F/18/2015-2016- Rehabilitation and Performance Based Routine Maintenance of Old Murera Gate-Kindani-Junct 22 in Meru National Park, and KWS/OT/PBC/R&F/20/2015-2016- Rehabilitation and Performance Based Routine Maintenance of Elephant Platform Kambi Mtamaiywa Circuit Road in Mt. Elgon National Park, were awarded in FY 2015-2016 for a contract period of 42 Months and their commencement date was 9th May 2016.

He stated that these works were hybrid PBC (Rehabilitation and PBC) , with their execution period spanning over three financial years. He stated that during their rehabilitation phase, the two-faced emerging challenges ranged from unforeseen adverse weather conditions to increased prices of basic materials required for major works. These challenges resulted in delays in the delivery of works, leading to variations in the contract period to enable the delivery of tasks and contract amount.

He stated that contract number KWS/OT/PBC/R&F/20/2015-2016 was successfully finished on 29th September 2021, and the final payment was made on 10th October 2021. Copies of the payment vouchers for this contract were provided for verification. He stated that the other contract, KWS/OT/PBC/ R&F /18/2015-2016, was completed in February 2022 with some rehabilitation works (two bridges worth KES 10,560,515.85) omitted from the initial contract sum.

He explained that the omission was necessitated by the increase in the scope of the planned works occasioned by the fact that flash floods washed off the bridge during implementation and the inflation of steel prices, which was the main component of the bridge works.

He also stated that the pending works were re-advertised and contracted in FY 2022/2023, and works had begun. He also stated the six (6) contracts awarded in 2020/2021 totalled Kshs 114,658,088 and were paid in the 2022/2023 financial year. Copies of the payment vouchers have been provided for verification.

### **Committee observation**

The Committee noted that the matter was not addressed.

## **2. Unapproved Payment of Contingencies**

The contractors made provisions for contingencies amounting to Kshs.40,821,578 in respect to tenders awarded in 2021/2022 which were paid during the year under review.

The contract variation and amendments emanated from the procuring Entity and were neither reviewed by an evaluation committee, nor submitted through the Head of Procurement function to the Accounting Officer for approval.

### **Management Response,**

The Accounting Officer submitted that the above amounts related to the emergency components of seven (7) Performance Based Contracts totalling Kshs. 29,113,872.00 and contingency provision in eleven (11) contracts totalling Kshs 11,707,706.58.

He noted that the emergency works undertaken were envisaged in the Performance (PBC) contracts and, hence, were not variations to the contracts.

### **Committee observation**

The Committee noted that the matter was addressed.

## **3. Irregular Evaluation of Tender**

The contract awarded to a contractor for Ruma Park at a contract sum of Kshs.22,852,288 had the following anomalies: The winning bidder did not give the correct information with regards to litigation history in his bid documents, which was a requirement. The bidder had an active court case at the Tax Appeals Tribunal under Appeal Number 132 of 2021 concerning a tax arrears dispute with the Kenya Revenue Authority. In addition, the bidder submitted a bid document that was not well paginated, a preliminary criterion. These two observations would have rendered the bidder non-responsive at the preliminary evaluation stage.

The contract awarded was not reported to the Authority as required under Regulation 60 of the Public Procurement and Asset Disposal Regulations, 2020. neither were the contract details uploaded to the Public Authority website as required under Section 138(1-3) of the Public Procurement and Asset Disposal Act, 2015.

### **Management Response**

The Accounting submitted that the committee relied on the bidder's response on litigation, which was witnessed by a power of attorney as an instruction to tender. He stated that the lack of an e-procurement system had hindered the reporting and uploading of awarded contracts. The service

had been engaging The National Treasure for IFMIS installation. He indicated that they were preparing quarterly reports to the Authority showing a list of contracts awarded. In addition, he stated that the same was published on the KWS website.

#### **Committee observation**

The Committee noted that the matter was not addressed.

#### **4. Non-Rotation of the Ad Hoc Evaluation Committees**

The members of the Ad Hoc Evaluation Committees were not appointed on a rotational basis since the same members evaluated many tenders relating to the Fund over the two (2) financial years without being rotated.

#### **Management response**

The Accounting officer submitted that the accounting officer appointed the evaluation committee under section 46(1) of the Act, which states that 'an accounting officer shall ensure that an ad hoc evaluation committee is established under the Act and Regulations made thereunder from and within members of staff, with the relevant expertise.

He stated that the committees comprised a chairman at the level of a director since the user department's membership had one of them at the level of a deputy director (Corporate Service), one technical officer from the department (Roads), and the Head of Finance who had the requisite expertise in the subject procurement. He stated that the members were not featured in any other procurement processes undertaken by KWS during the period in question.

Management took note of the recommendation and will endeavour to observe the requirement during future appointments of the evaluation committees.

#### **Committee observation**

The Committee noted that the matter was addressed in the subsequent year.

#### **5. Anomalies in Tarmacking of 22 Kilometres Road at Amboseli National Park**

The Management awarded two (2) Contracts to carry out road works on twenty-two (22) kilometers Tarmac Road where each contractor was awarded 11kms. The first contract was for the rehabilitation of Kimana Gate-Ngong VEG Farm (Road C103)/Kimana Gate-Amboseli Headquarters 11kms Road at a contract sum of Kshs.105,283,708 with a contract period of six (6) months. The second contract agreement was for rehabilitating 11km of Ngong VEG Farm Gate Kimana JUNCT (Road C103) at a contract sum of Kshs.72,554,632 with a contract period of six (6) months.

Although the two sections of the roads are equal (11 km), the contract sum for each section was different. However, the Management has not explained the reasons for the variance of Kshs.32,729,076 in the road contract sums. An audit inspection carried out in July 2022 observed

that the construction works were not yet completed despite the expiry of six (6) of the six months stipulated in the contract, and no approval documents for extension were availed.

The road diversions had a lot of dust as there was either very little or no water poured on the diversions, hence posing health risks to the tourists using the road to visit the park.

### **Management Response**

The Accounting officer submitted that the above difference of Kshs.32, 729,076 emanating from the comparison of the two contract sums was due to the varying scope of works for the two sections of the road (Contracts were lotted into two different tenders with dissimilar site conditions). He stated that each had a difference in quantities as per the bill of quantities.

He also noted that the Employer's budget for the two contracts, as indicated in the tender document page 21 for both tenders, was also different. This declaration was known to all bidders during the tendering process. 8 Committee observation: The Committee noted that the matter was partially addressed.

### **Committee observation**

The Committee directed management to provide the certificate of completion certificates to ascertain the completion of the roads.

## **6. Budget Over-Expenditure**

The Fund operated over and above the approved budget of Kshs.651,338,776 against the actual expenditure of Kshs.830,231,819 resulting in over- expenditure of Kshs.178,893,043 or 127% of the total budget., value for money could not be realized due to the deterioration of the value of the livestock.

### **Management Responses**

The Accounting Officer submitted that the total expenditure of Kshs.830, 231,819 comprise Kshs. 801,351,143.47 for Road works and Kshs. 28, 880,676 for administrative activities for the year under review.

He explained that Included in the aforesaid amount was Kshs.459, 249,477.13 relating to brought forward funds for ongoing works whose certificates crystalized for payment during the year under review, while Ksh.370 982,342 was related to actual works and administrative activities done in the year under review and was funded under the budget of Kshs 651,338,776 for 2021/2022FY.

### **Committee observation**

The Committee noted that the matter was partially addressed as there was an under-absorption of the budget.

The Committee advised that management provide a list of projects of the previous year and current year that rolled over to the Auditor General to avoid the matter from recurring in auditing.

#### **7. Non-Maintenance of Imprest Register**

An amount of Kshs.10,105,175 was incurred on domestic travel and subsistence. However, no imprest register was provided for audit review.

#### **Management Response**

The Accounting Officer submitted that the management maintained both soft and manual Imprest registers. He stated that the updated soft copy is now available for audit verification.

#### **Committee observation**

The Committee noted that the matter was addressed.

#### **8. Irregularities in the Management of Temporary Imprest**

Management paid imprest of Kshs. 5,042,380 paid to officers as group temporary imprest instead of being paid to individuals.

There was no evidence to show that the officers received the imprest as some officers did not sign on the payment schedules attached to the vouchers. It was also impossible to confirm whether each officer individually accounted for the imprest received.

#### **Management Responses**

The Accounting Officer submitted that KWS has diverse staff distribution across the entire country, thus posing logistical/ operational technicalities and challenges in issuing individual Imprests.

He stated that to engage controls, they have put in place a requirement to fill in a field trip approval form declaring staff in the group travelling for the same activity.

He noted that although one staff applied for imprest for the group instead of each staff taking an imprest, the allowances for each were disbursed to their respective bank accounts.

He also stated that all the staff in the imprest then sign a payment schedule to acknowledge receipt of the monies and the same form was used to account and surrender the Imprest.


#### **Committee observation**

The Committee noted that the matter was addressed in the subsequent year.

MIN. NA/AA&SC-SFAC/2023/031:

**ADJOURNMENT/DATE OF NEXT MEETING**

There being no other business, the meeting was adjourned at 12.44 p.m. The next meeting will be held on notice.

SIGNED..........DATE.....  
Chairperson

f HON. FATUMA ZAINAB MOHAMMED, MP  
(CHAIRPERSON)

**SPECIAL FUNDS ACCOUNTS COMMITTEE**

**MINUTES OF THE 57<sup>TH</sup> SITTING OF THE SPECIAL FUND ACCOUNTS COMMITTEE  
HELD ON THURSDAY, 12<sup>TH</sup> OCTOBER 2023, IN BOMA HOTEL, SOUTH C AT 09.30  
A.M.**

---

**PRESENT**

1. Hon. Fatuma Zainab Mohammed, MP - Chairperson
2. Hon. Dawood Abdul Rahim, HSC, MP - Vice Chairperson
3. Hon. Joseph Majimbo Kalasinga, MP
4. Hon. Eve Akinyi Obara, MP
5. Hon. Faith Wairimu Gitau, MP
6. Hon. Charles Ngusya Nguna, MP
7. Hon. Catherine Nakhabi Omanyoo, MP
8. Hon. Erastus Kivasu Nzioka, MP
9. Hon. Dr. Christine Ombaka Oduor, MP
10. Hon. Paul Kibichi Biego, MP

**APOLOGIES**

1. Hon. Tom Mboya Odege, MPHon.
2. Hon. Joshua Odongo Oron, MP
3. Hon. Cecilia Asinyen Ngirit, MP
4. Hon. Kahugu Erick Mwangi, MP
5. Hon. Joseph Kimutai Chererot, MP

**IN ATTENDANCE**

**OFFICE OF THE AUDITOR GENERAL**

1. Mr. James M Njeru - Deputy Director
2. Ms. Grason Wanjuku - Auditor
3. Mr. David Osiemo - Auditor/Parliamentary Liaison Officer

**KENYA RURAL ROADS AUTHORITY**

1. Eng. Philemon Kandie, MBS - Director General
2. Ms. Catherine Butaki - Deputy Director, Communication
3. CPA Judith C Chumo - Deputy Director Audit Services
4. CPA William Abungu - Principal Accountant
5. CPA Matilda - Deputy Director, Finance
6. Eng. Peter Gichohi - Director MTCE

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Leonard Machira - Principal Clerk Assistant II
2. Mr. Silvanus Makau - Clerk Assistant III

3. Ms. Comfort Achieng - Clerk Assistant III
4. Mr. Robert Ngetich - Fiscal Analyst II
5. Ms. Judith Kanyoko - Legal Counsel II
6. Ms. Pauline Sifuma - Hansard Reporter
7. Mr. Peter Mutethia - Audio Recording Officer III
8. Mr. Benard Omondi - Serjeant At Arms

**MIN. NA/AA&SC-SFAC/2023/012:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 12:05 p.m., followed by a word of prayer and introductions.

The following agenda was adopted as circulated:

1. Prayers
2. Preliminaries/Introductions
3. **Examination of the report of the Auditor General on Account of the Road Maintenance Levy Fund (KERRA) for the financial years 2020/2021 and 2021/2022.**
4. Any Other Business
5. Adjournment Date of the next meeting.

After that, Eng. Philemon Kandie, MBS Director General KERRA, took the witness oath and tabled the Management responses and supporting documents on the audited accounts of the Fund for Financial Years 2020/2021 to 2021/2022.

**MIN. NA/AA&SC-SFAC/2023/013:**

**EXAMINATION OF REPORT OF THE AUDITOR GENERAL ON ACCOUNTS OF ROAD MAINTENANCE LEVY FUND (KERRA) FOR THE FINANCIAL YEARS 2020/2021 AND 2021/2022.**

**Financial Year 2020/2021**

**1. Unsupported Cash and Cash Equivalents**

The Statement of financial position reflects cash and cash equivalent balance of Kshs.20, 827,705,000. There was a negative cash balance of Kshs.26, 035,445 in the Road Maintenance Levy Fund (RMLF) Operations Headquarters account.

**Submissions by the Accounting Officer**

The Accounting Officer submitted that:

- i. The negative balance was a cashbook balance, which was rectified in the subsequent month of July 2021.
- ii. The bank statement as at 30<sup>th</sup> June 2021 was positive Kshs.25, 231,707.53. This was corrected in the subsequent Month of July 2021

### **Observations of the Committee.**

The Auditor informed the Committee that the matter was addressed.

### **Financial Year 2021/2022**

#### **a) Inadequate details in the Ledger**

The Statement of financial performance had Kshs.23, 295,330,000 in respect of road works expenditure.

- 10% RMLF Critical link roads totaled to Kshs.3,994,932,000.00 Kshs.533,300,491 had various codes that had no system description of the payee.
- 22% RML Constituency Fund totaled to Kshs.7,950,000,000.00 Kshs.951,756,566.00 had various codes with no system description of the payee

In the circumstances, the accuracy and completeness of payments totaling Kshs.1, 485,057,057 could not be confirmed.

#### **Submissions by the Accounting Officer**

The Accounting Officer submitted that the system description of the payee and details of payments in the various ledgers have now been reviewed and are available for audit.

### **Observations of the Committee.**

- i. The Accounting Officer informed the Committee that the delay in the submission of payee and details of payments in the various ledgers was occasioned by the transition to the ERP system; and
- ii. The Auditor informed the Committee that the matter was still pending awaiting confirmation during the 2022/2023 Audit.

#### **b) Unresolved Prior Year Matters**

Several issues were raised in the previous year; the management has not resolved or explained them.

#### **Submissions by the Accounting Officer**

The Accounting Officer submitted that the management noted the Auditor's comments and the Authority had complied.

### **Observations of the Committee**

The Auditor informed the Committee that the matter was addressed in the subsequent year during the 2022/2023 Audit.

**c) Anomalies Noted During Projects Inspections**

Physical inspection of 20 projects with a total contract sum of Kshs.76, 384,259 carried out in February 2023 revealed various anomalies.

**Submissions by the Accounting Officer**

The Accounting Officer submitted that:

- i. The projects listed were short-term contracts with a limited scope of work.
- ii. These projects were designed as gravel roads. The main objective of these projects was to open and improve the motor ability of critical links within our road network.
- iii. Due to limited project scope and funding, several activities in the project have been carried over to be executed as and when funds are available.

**Observations of the Committee.**

The Auditor informed the Committee that the matter was still pending.

**MIN. NA/AA&SC-SFAC/2023/014:  
NEXT MEETING**

**ADJOURNMENT / DATE OF**

There being no other business, the Meeting was adjourned at 11:20 a.m. The next meeting is to be held on notice.

SIGNED.....*Fatuma Zainab*.....DATE *12/11/2023*.....

**HON. FATUMA ZAINAB MOHAMMED, MP**

**(CHAIRPERSON)**

**SPECIAL FUNDS ACCOUNTS COMMITTEE**

**MINUTES OF THE 58<sup>TH</sup> SITTING OF THE SPECIAL FUND ACCOUNTS COMMITTEE  
HELD ON TUESDAY, 19<sup>TH</sup> OCTOBER 2023, IN BOMA INN AT 9.30AM.**

---

**PRESENT**

1. Hon. Fatuma Zainab Mohammed, MP - Chairperson
2. Hon. Dawood Abdul Rahim, HSC, MP - Vice Chairperson
3. Hon. Erastus Kivasu Nzioka, MP
4. Hon. Charles Ngusya Nguna, MP
5. Hon. Joseph Majimbo Kalasinga, MP
6. Hon. Catherine Nakhabi Omanyoo, MP
7. Hon. Cecilia Asinyen Ngitit, MP
8. Hon. Paul Kibichi Biego, MP
9. Hon. Kahugu Erick Mwangi, MP

**APOLOGIES**

1. Hon. Faith Wairimu Gitau, MP
2. Hon. Dr. Christine Ombaka Oduor, MP
3. Hon. Eve Akinyi Obara, MP
4. Hon. Tom Mboya Odege, MP
5. Hon. Joseph Kimutai Cherorot, MP
6. Hon. Joshua Odongo Oron, MP

**IN ATTENDANCE**

**ROADS MAINTENANCE LEVY FUND (KENYA URBAN ROADS AUTHORITY)**

1. Eng. Kinoti - Director General
2. Eng. William Oginga - Director Finance Services
3. Mr. Reuben Mayienda - Director Cooperate Services
4. Eng. Abdul Rashid Mohammed - Director Roads and Maintenance

**OFFICE OF THE AUDITOR-GENERAL**

1. Mr. James M. Njeru - Deputy Director Audit
2. Mr Moses Kabare - Principal Auditor
3. Mr. David Osiemo - Auditor/Parliamentary Liaison Officer

**NATIONAL TREASURY**

Mr. Simon K. Kiriiba - Parliamentary Liaison Officer

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Leonard Machira - Principal Clerk Assistant II
2. Ms. Comfort Achieng - Clerk Assistant III
3. Mr. Silvanus Makau - Clerk Assistant III

- |                          |                               |
|--------------------------|-------------------------------|
| 4. Ms. Bevaline Mosoti   | - Research Assistant III      |
| 5. Mr. Geoffrey Kwatamba | - Media Relations Officer III |
| 6. Ms. Pauline sifuma    | - Hansard Reporter III        |
| 7. Mr. Peter Mutethia    | - Audio Officer III           |
| 8. Mr. Benard Omondi     | - Serjeant at arms            |

**MIN. NA/AA&SC-SFAC/2023/001:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10.01 am, followed by a word of prayer and introductions.

The following agenda was adopted as circulated:

1. Prayers
2. Preliminaries/Introductions
3. **Examination of the Auditor General Reports on Accounts of the Roads Maintenance Levy Fund (Kenya Urban Roads Authority) for the Financial Years 2020/2021 and 2021/2022.**
4. Any Other Business
5. Adjournment Date of the next meeting.

After that, the Director General and the Accounting Officer for the **Roads Maintenance Levy Fund (Kenya Urban Roads Authority)**, undertook the witness oath. He tabled the management responses and supporting documents on the audited accounts of the **Roads Maintenance Levy Fund (Kenya Urban Roads Authority)** for the financial years 2020/2021 and 2021/2022.

**MIN. NA/AA&SC-SFAC/2023/002:**

**CONSIDERATION OF THE AUDIT REPORTS OF ROADS MAINTENANCE LEVY FUND (KENYA URBAN ROADS AUTHORITY) FOR THE FINANCIAL YEARS 2020/2021 AND 2021/2022.**

**Brief on the mandate and scope of the Fund**

The Accounting officer briefed the Committee on the operations and scope of the **Roads Maintenance Levy Fund (Kenya Urban Roads Authority)**.

**Examination of the Auditor General reports for Roads Maintenance Levy Fund (Kenya Urban Roads Authority), for the Financial Year 2020/2021**

The Committee examined the Auditor General's report for the Railway Development Levy Fund, Holding Account for the Financial year 2020/21 as follows:

**1. Unsupported Cash and Cash Equivalent**

-The Fund did not prepare financial statements as required. The Fund cash and cash equivalent included in the KURA main account balance of kshs .2,717,690,436, as disclosed in Note 9,

were not supported with a cashbook, bank reconciliation statements and bank confirmation certificates.

-The accuracy and completeness of the cash and cash equivalents balance of Kshs.2,717,690,436 could not be confirmed.

#### **Management response**

The Accounting Officer submitted that it was impossible to separate the accounts mid-year ending 30 June 2021. He stated that opening new accounts is ongoing, and funds will be transferred once the new accounts are operational.

#### **Committee observation**

The Committee noted that the matter was partially addressed. The management was directed to provide the cashbook reconciliations to the Auditor General for verification.

### **2. Maintenance of Nairobi - Outering Road**

Physical verification of the project revealed that the designated pedestrian footbridge at the main junction of Outering Road and Thika Road lacked barriers and a lighting system. Further, the Tassia Road section had open drainages clogged with garbage and overgrown vegetation, even though a firm had been contracted to regularly maintain the drainages along the road. value for money from road assets may not be achieved.

#### **Management response**

The Accounting Officer submitted that the Cleaning of drainage channels and collection of garbage within the road was a continuous exercise, and since the road was in a built-up area, dumping and filling of drains happened frequently. He stated that the PBC contractor had been instructed to ensure the drains were always clean during the contract period. He also explained that they had engaged the County Government in controlling the dumping on the road and the drainage.

He added that the vandalism of road assets, more so the metallic ones, was a national challenge to all the road agencies. However, KURA, through collaboration with the National Police Service, had enhanced surveillance to deter and apprehend the vandals. He indicated that KURA was also liaising with other stakeholders to address the challenge.

#### **Committee observation**

The Committee noted that the matter was partially addressed.

### **3. Foot Bridge on Eastern Bypass Road City Cabanas Area**

Physical verification revealed that the metal bars erected to ensure the safety of pedestrians closing the road had been vandalized and not replaced, exposing pedestrians to the risk of being run over by speeding vehicles. value for money from road assets may not be achieved.

#### **Management Responses**

The Accounting Officer submitted that the Authority was considering using concrete barriers since they were not vulnerable to vandalism. He stated that the pedestrians were being sensitized to use the provided footbridge to minimize the risk of accidents by vehicles and that the Authority has further engaged the national police to aid in enforcement and surveillance

**Committee observation**

The Committee noted that the matter was not addressed.

**Examination of the Auditor General reports for Roads Maintenance Levy Fund (Kenya Urban Roads Authority), for the Financial Year 2021/2022**

**1. Non-compliance with Public Sector Accounting Standards Board Reporting Requirements.**

The financial statements did not comply with the recommended reporting template provided by the Public Sector Accounting Standards Board.

**Management Response**

The Accounting Officer submitted that the templates issued by the Public Sector Accounting Standards Board (PSASB) contained guidelines derived from International Public Sector Accounting Standards (IPSAS) and relevant statutes. He stated that, however, like any other templates, they may not be exhaustive, and the preparers of the financial statements were advised to refer to the relevant standards and statutes to ensure full compliance.

He stated that the Authority reviewed the template and noted some errors and omissions that, if not corrected, would have a significant effect on the financial statements. In particular, the template did not meet the threshold of the Road Maintenance Levy Fund as defined by the relevant legislation.

He stated that the modification complied with International Public Sector Accounting Standards (IPSAS) to ensure the financial statements met the qualitative characteristics of relevance, faithful representation, understandability, comparability, and verifiability. He added that the amendments have since been shared with the Public Sector Accounting Standards Board for concurrence and revision of the templates.

**Committee observation**

The Committee noted that the matter was partially addressed since there was no concurrence from the board.

**2. Receivables from non-exchange transactions**

Included in the Receivables from non-exchange transactions balance of Kshs.5,097,011,271 is granted receivable-RMLF of Kshs.5,077,624,094 due from Kenya Roads Board. However, the audited financial statements of Kenya Roads Board Fund reflect RMLF disbursement payable to Kenya Urban Roads Authority of Kshs.2,322,321,695 as of the same date, resulting in an

unreconciled difference of Kshs.2,755,302,399. In the circumstances, the accuracy of RMLF grants receivable of Kshs.5,077,624,094 could not be confirmed.

#### **Management Response**

The Accounting Officer submitted that the grants receivable had accrued based on the records available to the Authority. He explained that according to their records, grants receivable from Kenya Roads Board amounted to Kshs.5,077,624,094 as was reported in the financial statements for the year ended 30th June 2022. He also stated that the supporting documents for the above amounts are available for verification. He also elaborated that the schedule provided, and the bank statements of the above amounts were subsequently received at the beginning of the F/Y 2022-2023 on the dates indicated below:

Date	Amount
5th July 2022	1,025,834,012
8th July 2022	1,133,678,923
15th July 2022	2,918,111,159
Total	5,077,624,094

#### **Committee observation**

The Committee noted that the matter was addressed.

### **3. Unimplemented Projects in the Annual Public Roads Program**

Included in the Receivables from non-exchange transactions balance of Kshs.5,097,011,271 is granted receivable-RMLF of Kshs.5,077,624,094 due from Kenya Roads Board. However, the audited financial statements of Kenya Roads Board Fund reflect RMLF disbursement payable to Kenya Urban Roads Authority of Kshs.2,322,321,695 as at the same date, resulting in an unreconciled difference of Kshs.2,755,302,399. In the circumstances, the accuracy of RMLF grants receivable of Kshs.5,077,624,094 could not be confirmed.

#### **Management Response**

-All the projects in the Approved ARWP FY 2021-2022 are attached for ease of reference.

#### **Committee observation**

The Committee noted that the matter was not addressed.

### **4. Nairobi Outering Road Improvement Project**

The contract for the Nairobi Outering Road Improvement project was awarded at a contract price of Kshs.8,263,399,494 and ended in April 2020 with a two-year defects' liability period. As previously reported, the project was on a maintenance contract but had challenges with open drainages that were used as receptacles for garbage/dumpsites. It was also noted that there were mounds of garbage by the roadside in certain sections. An audit inspection on 15 February 2023

noted improvements in the observations made in the previous year. However, the following issues were still outstanding:

- i. Cleaning closed drains was not done well, and some drainage covers had been vandalized. The maintenance contractor on-site needs to plan for occasional cleaning of the closed drains to avoid flooding, especially during the rainy season.
- ii. Dumping of garbage on various sections of the road was seen to pose a challenge to the contractor.
- iii. Pedestrians were seen to cross the road on various sections, whereas footbridges were erected for crossing.

In these circumstances, there is a risk of flooding on the road and loss of pedestrians' lives, especially where there are no barriers.

#### **Committee observation**

The Committee noted that the matter was not addressed, but there was an improvement from the previous financial year.

#### **Management response**

The Accounting officer submitted that there was an ongoing Performance Based Contract on Outering Road was responsible for general cleaning of the carriageway drains and minor repairs. He further submitted that several footbridges are already installed on this road, and the Authority was working on additional measures to improve safety. He also stated that the canopies were not part of the footbridge design and that it was purposefully left out to deter hawkers and street families from occupying the facilities.

He also added that it was also geared towards improving the security of the pedestrians. He explained that some road sections' metal and concrete barriers were vandalized.

He also explained that this was a common problem in the infrastructure sector and the Authority was working on alternative materials for barriers.

#### **Committee observation**

The Committee noted that the matter was not addressed, but there was an improvement from the previous financial year.

#### **5. Improvement of Nairobi Lot 2 - Upgrading of Shreeji Road and Parts of Likoni and Enterprise Roads (Contract No. KURA /HQ/330 2019-2020)**

The contract for the road works was awarded at a contract sum of Kshs.892,661,116 on 08 September 2020. Contract duration of 24 months and an expected completion date of 30 September 2022. It also included a 36-month PBC maintenance contract for Kshs.13,250,790. The scope of the contract included the rehabilitation and upgrading of the single carriageway of Shreeji

road (1.1K.m) to two lanes two-way 7m, construction of walkways and drains, expansion of the existing bridge over the rail on Likoni road and river bridge on Enterprise Road, concrete drains on both sides, pipe culverts and other drainage works and road furniture. The contract duration elapsed, and the contract period was subsequently extended to 8<sup>th</sup> April 2023.

-The contractor is, however, still behind schedule as some of the major road works have not been undertaken, as detailed below:

- i. The Likoni Road bridge section is incomplete;
- ii. The Enterprise Road bridge section is incomplete; the provision of the pavement structure is incomplete. It was agreed with the Authority that for this section, the contractor would submit design drawings for the proposed bridge structure; and
- iii. A section of Shreeji Road is incomplete. The contractor was doing earthworks at the time of the audit on 15 February 2023. It was agreed that the contractor submit a work plan, which will be shared with the owners of the warehouses whose access will be affected as the contractor carries out the remaining construction works. -In the circumstances, it is unlikely that the project will be completed by the new completion date of 8 April 2023, and costs may escalate due to the inflation extension.

### **Management Response**

The Accounting Officer submitted that the works were ongoing. The Likoni bridge section was omitted from the above Contract due to the conditions from Kenya Railways, which were not factored in during the design period and thus cannot be accommodated within the Contract. He also stated that the contractor submitted a work plan, which was shared with the owners of the warehouses whose accesses will be affected as the construction works proceed.

### **Committee observation**

The Committee noted that the matter was not addressed.

### **6. Eastern By-pass Road-Footbridge near Cabanas Area**

The construction of the footbridge was carried out by the Authority through funding from African Development Bank and completed for use by motorists several years back. -The Authority had also erected metal barriers along the road. Between the bars were light metal sheets to ensure that the pedestrians do not cross the road at undesignated areas but instead use the footbridge for their safety. During the audit inspection on 15 February 2023, it was observed that the barriers were either crashed by speeding vehicles or had been vandalized.

This resulted to the risk of loss of lives by pedestrians not using the footbridges. This issue had been noted and reported in the previous year's audit with no intervention from the Management of the Authority. -In the circumstances, there is a risk of loss of pedestrians' lives as there are no barriers to ensure safe usage of the footbridge, and the public may not get value for money on the road maintenance contract.

**Management Responses**

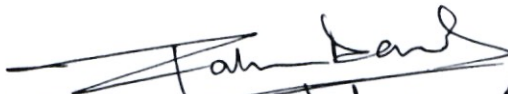
The Accounting Officer submitted that the steel barriers had been erected severally and had been extensively vandalized. He also stated that the authority had emphasized using concrete as a barrier since they are not vulnerable to vandalism. He noted that the Pedestrians were being sensitized to use the provided footbridge to minimize the risk of vehicle accidents. He also stated that a more permanent solution should be implemented by involving all security agencies to ensure that the road is clear, and that vandalism is eliminated.


**Committee observation**

The Committee noted that the matter was not addressed.

**MIN. NA/AA&SC-SFAC/2023/003: ADJOURNMENT/DATE OF NEXT MEETING**

There being no other business, the meeting was adjourned at 12.30 p.m. The next meeting will be held on notice.

  
SIGNED.....Chairperson.....DATE.....

 HON. FATUMA ZAINAB MOHAMMED, MP  
(CHAIRPERSON)

SPECIAL FUNDS ACCOUNTS COMMITTEE

**MINUTES OF THE 5<sup>TH</sup> SITTING OF SPECIAL FUND ACCOUNTS COMMITTEE  
HELD ON FRIDAY, 23<sup>RD</sup> FEBRUARY 2024, IN GARDEN SUITE CONFERENCE ON ON  
6<sup>TH</sup> FLOOR, HILTON GARDEN HOTEL AT 9.30AM.**

---

**PRESENT**

1. Hon. Fatuma Zainab Mohammed, MP - Chairperson
2. Hon. Erastus Kivasu Nzioka, MP
3. Hon. Charles Ngusya Nguna, MP
4. Hon. Eve Akinyi Obara, MP
5. Hon. Tom Mboya Odege, MP
6. Hon. Catherine Nakhabi Omanyoo, MP
7. Hon. Cecilia Asinyen Ngigit, MP
8. Hon. Joseph Kimutai Cherorot, MP
9. Hon. Paul Kibichi Biego, MP

**APOLOGIES**

1. Hon. Dawood Abdul Rahim, HSC, MP - Vice Chairperson
2. Hon. Faith Wairimu Gitau, MP
3. Hon. Joseph Majimbo Kalasinga, MP
4. Hon. Dr. Christine Ombaka Oduor, MP
5. Hon. Joshua Odongo Oron, MP
6. Hon. Kahugu Erick Mwangi, MP

**OFFICE OF THE AUDITOR-GENERAL**

1. Mr. David Osiemo - Liason Officer.
2. Mr. Simon Kiiriba - National treasury

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Erick Nyambati - Clerk Assistant I
2. Ms. Comfort Achieng - Clerk Assistant III
3. Mr. Nimrod Mate - Clerk Assistant III
4. Mr. Robert Ngetich - Fiscal Analyst II
5. Ms. Judith Kanyoko - Legal Counsel II
6. Mr. Derrick Kathurima - Media Relations Officer
7. Ms. Pauline Sifuma - Hanasard Reporter II
8. Mr. Benard Omondi - Sergeant-at-arms
9. Mr. Abdifatah Mahat - Attachee

**MIN. NA/AA&GPC-SFAC/2024/014:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10.33am, followed by a word of prayer and introductions. The following agenda was adopted as circulated:

1. Prayers
2. Preliminaries/Introductions
3. Report Writing on Consideration of the Auditor General Reports on Accounts of the Road Maintenance Levy Fund Kenya wild service fund for the Financial Years 2020/2021 and 2021/2022.
4. Any Other Business
5. Adjournment Date of the next meeting.

MIN. NA/AA&GPC-SFAC/2024/015: REPORT WRITING ON CONSIDERATION OF THE AUDITOR GENERAL REPORTS ON ACCOUNTS OF THE ROAD MAINTENANCE LEVY FUND (KENYA WILD SERVICE) FOR THE FINANCIAL YEARS 2020/2021 AND 2021/2022

**EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE ON THE ROAD MAINTENANCE LEVY FUND (KENYA WILDLIFE SERVICE) FOR THE FINANCIAL YEAR 2020/2021 AND 2021/2022**

1. Dr. Erustus Kanga the Director General, Kenya Wild Service appeared before the Committee on Thursday 23<sup>rd</sup> November 2023 to adduce evidence on the audited financial statements for the Road Maintenance Levy Fund for the Financial Years 2020/2021 and 2021/2022. The minutes of the Committee sitting, and submissions tabled by the Accounting Officer are annexed to this report. He was accompanied by:
  1. Mr. Peter Mathenge - Senior Accountant KWS
  2. Prof. Charles Musyoki - Director of Parks and Reserves
  3. Mr. Micah Aiyabel - Principal Superintendent of Roads
  4. Mr. Johana Tonui - Principal Superintendent Accounts
  5. Mr. Benard Mbeda - Ag. Director of Infrastructure & Facilities Management
  6. Ms. Leah Nausia - Director of Supply Chain Management

**3.1 Examination of the report of the Auditor-General for the Financial Year 2020/2021**

**a. Retention Monies not Held in a Separate Account**

2. The statement of financial position reflects other payables of Kshs.28,303,797 (2020: Kshs.7,876,753) which, as disclosed in Note 8 to the financial statements, includes contractors' retention monies balance to Kshs.9,985,928 held by the Fund. However, Management did not maintain a separate bank account for deposits and payments of retention monies and instead, the Fund used an operations account which is in the name of Kenya Wildlife Service.
3. The retention monies may not be available to pay contractors as and when claims for retention are presented for payment. Further, the schedule of retention monies includes unpaid retention monies amounting to Kshs.213,605 which are over five (5) years old. In the circumstances, the accuracy and existence of retention monies balance of Kshs.9,985,928 could not be confirmed.

#### **Submissions by the Accounting Officer**

4. The Accounting Officer submitted that the Service has a specific bank account for KRB operations. The account served as the recipient of funds transferred from the Kenya Roads Board and accrued interest. He confirmed that all expenditures related to the Road Maintenance Levy Fund were processed through the account.
5. He acknowledged, that the Service currently did not maintain a separate bank account specifically designed for retention money as highlighted in the Audit report
6. He further submitted that the retention money represented a portion of the contract price withheld for a define period after completion of works. He stated that this withholding was intended to ensure that contractors met the prescribed quality and standards.
7. He also submitted that the disbursement of the retained funds to the contractors was upon the conclusion of the agreed retention period. He further explained that if the retention money was moved to another separate account, it would amount to irregular transfer and splitting of specific projects funds and thus a contravention of PFM Act.
8. He further submitted that to uphold accuracy in the reporting and disbursement of retention money, specific supplier ledger accounts were maintained, reconciled monthly and when contracts had been fully discharged, certificates of completion were issued, and the retention money immediately paid to the contractor.
9. The Accounting Officer also confirmed an amount totaling Ksh 9,985,928 was securely being held in KRB bank account. He explained that this amount was appropriately documented under current liabilities and was to be disbursed to the contractors as per the agreed schedule reported under current liabilities and payable to contractors when it falls due.

#### **Observations of the Committee**

10. The Committee observed that:
  - i. The Fund did not maintain a separate bank account for deposits and payments of retention monies, instead, had an operations account, which received all funds transferred from Kenya Roads Board and interest accrued thereon;
  - ii. The Fund operated a financial system which had a creditor's module that maintained specific ledger balances per individual contractor which was reconciled monthly with the bank balances ensuring funds were always available to pay contractors once their contracts have been fully discharged and certificate of completion issued; and .
  - iii. The matter remained unresolved.

#### **Recommendation of the Committee**

Within three months of the adoption of this report, the Service to open and maintain a separate account for retention monies

**b. Variances in Road Maintenance Levy Fund**

11. The statement of financial performance reflects road maintenance levy fund amount of Kshs.871,051,487 which is at variance with the road maintenance levy fund amount of Kshs.721,507,377 reflected in the statement of comparison of budget and actual amount by unexplained variance of Kshs.149,544,111. In the circumstances, the accuracy and completeness of the road maintenance levy fund amounting to Kshs.871, 051,488 could not be confirmed.

**Submissions by the Accounting Officer**

12. The Accounting Officer confirmed that the annual budget allocation for KRB project was Kshs. 871,051,488 during the financial year 2020/2021. He submitted that the actual amount received from KRB during the year was Kshs.721,507,377 and the balance of Kshs. 149,544,111 was accrued as receivable as at 30<sup>th</sup> June 2021 and this amount was subsequently transmitted to KWS on July 7<sup>th</sup> 2021, as indicated in the copy of the bank statement which was provided for verification.

**Observations of the Committee**

13. The Committee observed that:
- i. The variance of Kshs. 149,544,111 was recorded as an accrual under receivables and was subsequently transmitted to KWS and verified by the Auditor General.
  - ii. The matter is resolved.

**c. Budget Over Expenditure**

14. The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.871,051,488 and Kshs.753,936,800 respectively resulting to an under-funding of Kshs.117,114,688 or 13% of the budget. Similarly, the Fund spent Kshs.1,284,062,760 against an approved budget of Kshs.871,051,488 resulting to an over-expenditure of Kshs.413,011,272 or 147% of the budget.
15. However, Management has disclosed that the work plan for 2019/2020 with an approved budget of Kshs.669,668,404 was implemented in the current financial period of 2020/2021. The Fund therefore could not absorb all the funds meant for the year under review as there were pending projects for 2019/2020 which were given priority.
16. In the circumstances, the Fund operated over and above the approved budget for the year contrary to the Appropriation Act, 2018, the Supplementary Appropriation Act, 2018 and Section 43 (b) of Public Finance Management Regulations, 2015. Management was in breach of the law.

**Submissions by the Accounting Officer**

17. The Accounting Officer submitted that the approved budget allocated for KRB project during the financial year 2020/2021 was Kshs. 871,051,488. He also confirmed the amount of Kshs. 721, 507,377 was received from KRB during the year and the balance of Kshs. 149,544,111 was accrued as receivable and later remitted to KWS on 7<sup>th</sup> July 2021.

18. He further submitted that a total amount of Kshs 871,051,488 was received across two consecutive financial years: Kshs 721,507,377 in the financial year 2020/21 and Kshs 149,544,111 in the financial year 2021/22. He further explained that the KRB bank account accrued interest totaling Kshs. 32,429,423.00 in the financial year 2020/21. He then elaborated that this interest, when added to the actual receipts from KRB (Ksh. 721,507,377-KRB + Kshs. 32,429,423-Interest income) during the financial year, amounted to a total of Kshs. 753,936,800.00.

19. The Accounting Officer also submitted that the overall expenditure for the financial year in review amounted to Kshs. 1,284,062,760. Further when contrasted with the budgeted amount of Kshs. 871,051,488, there exists a variance of Kshs. 413,011,272. He clarified that this variance corresponded to payments made for rollover projects from the preceding year that were concluded and settled during the reviewed financial year as indicated in the table below:

	APRP BUDGET FY2020/21 (KSH)	ACTUAL FY 2020/21 (KSH)	VARIANCE FY 2020/21 (KSH)
<b>Receipts</b>			
Road Maintenance Levy FYAPRP 2020-2021 regular in addition to Special allocation	871,051,488.00	721,507,377	149,544,111
Finance Income (Interest)		32,429,423	(32,429,423)
<b>Total received</b>	<b>871,051,488</b>	<b>753,936,800</b>	<b>117,114,688</b>
<b>Expenditure</b>			
Administrative cost	25,204,827	17,017,909	8,186,918
Roads Works	845,846,661	1,267,044,851	(421,198,190)
<b>Total Expenditure</b>	<b>871,051,488</b>	<b>1,284,062,760</b>	<b>(413,011,272)</b>

#### Observations of the Committee

20. The Committee observed that:

- i. The amount of Kshs 871,051,488 was received across two consecutive financial years: Kshs 721,507,377 in the financial year 2020/21 and Kshs 149,544,111 in the financial year 2021/22.
- ii. The funds received during the two financial years and interest earned have been verified by the Auditor General but no documentary evidence on the utilization was provided.
- iii. The Interest earned amounting to Kshs. 32,429,423 was budgeted for in the subsequent financial year 2020/2021.

- iv. The matter remained resolved

#### Recommendations of the Committee

##### 21. The Committee recommends that:

- i. Within three months of the adoption of this report, the Accounting Officer to provide documentary evidence on the utilization of the interest accrued amounting to Kshs. 32,429,423 to the Auditor General for verification and
- ii. The Accounting Officer to at all times ensure that all applicable accounting and financial controls, systems, standards, laws, and procedures are followed in the preparation of the financial statements in compliance with Public Finance Management Act, 2012, and in accordance with the standards prescribed by the Public Sector Accounting Standards Board as per Regulation 101(4) of the Public Finance Management (National Government) Regulations, 2015.

#### REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

##### d. Delay in Completion of Projects

22. Annex 1 to the financial statements reflects schedule of unexecuted works and ongoing works totaling to Kshs.181,683,632. Included in this balance is Kshs.66,170,333 or 36% for two (2) ongoing projects awarded in 2015/2016 financial year. However, by the time of audit in the month of June, 2022, percentage completion of the two (2) projects was at 75% and 72% respectively.
23. The Management has however, explained the slow pace of implementation of these projects was due to unforeseen adverse weather conditions and inflation of prices of basic items for major works. In the circumstances, the value for money, efficiency and effectiveness of these projects may not have been derived due to the delay in completing the projects.

##### Submissions by the Accounting Officer

24. The Accounting Officer submitted that the two contracts, namely KWS/OT/PBC/R&F/18/2015-2016 for the Rehabilitation and Performance-Based Routine Maintenance of Old Murera Gate-Kindani-Junct 22 in Meru National Park and KWS/OT/PBC/R&F/20/2015-2016 for the Rehabilitation and Performance-Based Routine Maintenance of Elephant platform Kambi Mtamaiywa circuit road in Mt. Elgon National Park were awarded during the financial year 2015-2016. The contracts, which commenced on 9th May 2016, had a duration of 42 months.
25. He further submitted that the projects were characterized as hybrid Performance-Based Contracts (PBC), encompassing both rehabilitation and performance aspects, and were executed over a period spanning three financial years. He further explained that throughout the rehabilitation phase, both projects encountered difficulties, including the impact of unexpected adverse weather conditions and the inflation of prices for essential items in major construction works.
26. He also submitted that the challenges caused delays in project delivery, resulting in variations in both the contract period and the contract amount. The completion of contract

KWS/OT/PBC/R&F/20/2015-2016 was accomplished on 29th September 2021, and the final payment was processed on 10th October 2021 as had been attached completion certificate in. He noted that contract KWS/OT/PBC/R&F/18/2015-2016 was finalized in February 2022 and the completion certificates was provided for verification.

#### **Observations and Findings of the Committee**

27. The Committee observed that;

- i. The percentage of completion for the projects in Meru and Mt. Elgon national parks by June,2022 was at 75% and 72% respectively.
- ii. The two projects for the Rehabilitation and Routine Maintenance of Old Murera Gate-Kindani-Junct 22 in Meru National Park and the Elephant platform Kambi Mtamaiywa circuit road in Mt. Elgon National Park were complete and tender contract submitted; and
- iii. The matter is resolved.

#### **Recommendations of the Committee**

28. The Committee recommends that:

The Accounting Officer to at all times ensure timely submission of accounting documentation required for audit during the audit as per the provisions of Section 31(4) of the Public Audit Act, 2015.

#### **e. Lack of a Disaster Recovery Plan**

29. During the year under review, the Fund did not have a Disaster Recovery Plan in place which details recovery procedures in place that may lead to serious organizational and institutional memory which may lead to loss of crucial data and information in case of disaster. In the circumstances, it was not possible to confirm control measures put in place by management to safeguard data and recovery in case of a disaster.

#### **Submissions by the Accounting Officer**

30. The Accounting Officer submitted that the Service initiated a vulnerability assessment and penetration testing in September 2022 to assess the resilience of internal systems against cyber-attacks, ICT systems failure, and data protection risks. The assessment was conducted by the National Computer and Cybercrimes Coordination Committee (NC4), and the results identified vulnerable areas, leading to specific recommendations that are currently being implemented.

#### **Observations and Findings of the Committee**

31. The Committee observed that;

- i. the Fund did not have a Disaster Recovery Plan in place which may lead to loss of crucial data and information in case of a disaster.
- ii. That the Fund has since put in place a risk management policy but there was no time limit provided to complete the disaster recovery plan.
- iii. The matter remained unresolved.

## Recommendations of the Committee

32. The Committee recommends that:

Within three months upon the adoption of this report the Accounting Officer to submit its risk management policy of to the Auditor -General for audit verification;

### 3.2 Examination of the report of the Auditor-General for the Financial Year 2021/2022

#### a. Unsupported Projects' Expenditure

33. As previously reported Annex 1 to the financial statements for 2020/2021 reflected schedule of unexecuted works and ongoing works totaling to Kshs.181, 683,632. Included in this balance is Kshs.66, 170,333 or 36% for two (2) ongoing projects awarded in 2015/2016 financial year. However, Annex 1 to the financial statements for 2021/2022 does not reflect the projects status and no project completion certificates were provided for audit. Further Annex 1 to the financial statements for 2021/2022 contains six (6) projects awarded in 2020/2021 totaling to Kshs.114,658,008 or 35% of the total outstanding uncertified projects with completion percentages of between 40% and 92%.

34. The Management has not provided reasons for non-completion of the projects. In the circumstances, the accuracy and completeness of the ongoing and unexecuted projects balance of Kshs.330,397,532 could not be confirmed.

#### Submissions by the Accounting Officer

35. The Accounting Officer submitted that he initiated the awarding of two contracts, namely KWS/OT/PBC/R&F/18/2015-2016 for the Rehabilitation and Performance-Based Routine Maintenance of Old Murera Gate-Kindani-Junct 22 in Meru National Park and KWS/OT/PBC/R&F/20/2015-2016 for the Rehabilitation and Performance-Based Routine Maintenance of Elephant Platform Kambi Mtamaiywa Circuit Road in Mt. Elgon National Park. He confirmed that the contracts were granted during the financial year 2015-2016, with a contract period of 42 months starting from May 9, 2016. He then stated that the projects, characterized as hybrid Performance-Based Contracts (PBC), involving both rehabilitation and performance aspects, were executed over a period spanning three financial years.

36. He also submitted that throughout the rehabilitation phase, the two projects encountered emerging challenges, including the impact of unexpected adverse weather conditions and a rise in the prices of essential materials needed for major works. He further explained that these difficulties led to delays in the delivery of the projects, necessitating adjustments to the contract period to ensure the completion of tasks and modifications to the contract amount.

37. He further submitted that the completion of contract number KWS/OT/PBC/R&F/20/2015-2016 was accomplished on September 29, 2021, with the final payment processed on October 10, 2021. Further contract number KWS/OT/PBC/R&F/18/2015-2016 was concluded in February 2022 and attached copies of completion certificate.

38. The six (6) contracts, with a combined value of Kshs 114,658,088, awarded in 2020/2021, were carried out during the fiscal year 2021/2022. However, he explained that the contracts faced setbacks, including adverse weather conditions, causing delays in the execution of the

works. The projects were eventually completed in the financial year 2022/23 and had been fully compensated. The copies of the payment vouchers were provided for audit verification.

#### **Observations and Findings of the Committee**

39. The Committee observed that;

- i. The percentage of completion for the projects in Meru and Mt. Elgon national parks by June,2022 was at 75% and 72% respectively.
- ii. The two projects for the Rehabilitation and Routine Maintenance of Old Murera Gate-Kindani-Junct 22 in Meru National Park and the Elephant platform Kambi Mtamaiywa circuit road in Mt. Elgon National Park were complete and tender contract submitted; and
- iii. The matter is resolved.

#### **Recommendations of the Committee**

40. The Committee recommends that:

The Accounting Officer must at all times ensure timely submission of accounting documentation required for audit during the audit as per the provisions of Section 31(4) of the Public Audit Act, 2015.

#### **REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES**

##### **b. Unapproved Payment of Contingencies**

41. A review of Bill of Quantities for tenders awarded and paid during the 2021/2022 financial year revealed that contractors made provisions for contingencies amounting to Kshs.40,821,578 which were paid during the year under review. However, the contract variation and amendments emanated from the procuring Entity and were neither reviewed by an evaluation committee, nor submitted through the Head of Procurement or to the Accounting Officer for approval.

42. This is contrary to Regulation 132 (1) and (2) of the Public Procurement and Asset Disposal Regulations, 2020 which states that Contract variations or amendments envisaged under Section 139(1)(b) of the Act for goods, works and services may either emanate from Procuring Entity on its own volition or from the contractor, and (2) Any variation request shall be reviewed. The payment of contract variations and amendments without review by an evaluation committee may result in misappropriation of funds. In the circumstances, the management was in breach of the law.

#### **Submissions by the Accounting Officer**

43. The Accounting Officer submitted that the mentioned figures relate to:

- a) The emergency components of seven (7) Performance-Based Contracts, amounting to Kshs.29,113,872.00.
- b) Contingency provision within eleven (11) contracts, summing up to Kshs 11,707,706.58.

#### **Use of Emergency Amount-under PBCs- 29,113,872**

44. The Accounting Officer submitted that the emergency works undertaken were envisaged in the Performance Based Contract (PBC) hence there were no variations. He also clarified that although Kshs 29,113,872 was budgeted for emergency works, Kshs 25,191,583.62 was spent resulting in a saving of Kshs 3,922,289. The PBC contracts incorporated rehabilitation, maintenance and emergency works which were all scoped in the contract. He also clarified that

due to the nature of occurrence of emergencies in park roads and the need for quick response on rectification as per the contract's provisions on timelines, the Resident engineers normally requested to utilize the emergency fund. He also stated that Kshs 25,191,583.62 was spent on such emergency works and were duly approved in FY 2021/22.

45. He further submitted that the response times, for example, cleaning of the carriageway for an unpaved road in PBC Guideline, was set as within 24 hours after the occurrence of the event. He also explained that in Emergency cases, the Engineer is obligated to approve its execution in less than 24hrs and utilize the amount set out under the emergency component of the Bill of Quantities. The extract of the Performance Standards for Unpaved Standard Road was provided for verification.

**Use of Contingency Amount-Kshs 11,707,706.58**

46. The Accounting Officer submitted that during the implementation of FY2021-2022 RMLF projects, the following batch of contracts had significant rearrangement of quantities of items of works within the contract sum and completion dates, hence requiring evaluation under contract variations.

Contract No.	Contingency Amount (Kshs)	Remarks	Approval Ref
KWS/OT/RMLF/42/FY2020-2021	1,732,224.13	This contract had an appraisal leading to substantial change in quantities of work beyond the 20% allowed in the Act	Signed and approved Evaluation Report for Works appraisal and Extension of time report dated 25th March 2022.
KWS/OT/TPF/41/FY2020-2021	2,465,968.00	Note that this project was funded under Tourism Promotion Fund and not RMLF. This contract had an appraisal leading to substantial change in quantities of work	Signed and approved Evaluation Report for Works appraisal and Extension of time report dated 25th March 2022.

		beyond the 20% allowed in the Act	
KWS/OT/RMLF/50/FY2020-2021	2,643,548	This contract had an appraisal leading to substantial change in quantities of work beyond the 20% allowed in the Act	Signed and approved Evaluation Report for Works appraisal and Extension of time report dated 18th July 2022.
KWS/OT/RMLF/51/FY2020-2021	1,821,760.10	This contract had an appraisal leading to substantial change in quantities of work beyond the 20% allowed in the Act	Signed and approved Evaluation Report for Works appraisal and Extension of time report dated 7th June 2022.
Total 8,663,500			

47. He further submitted that the following works experienced rearrangement of quantities within the existing items of work, rates quoted, and the contract sum as guided by Clause 13, 51, & 52 of the General conditions of contract (FIDIC).

Contract No.	Contingency Amount (Kshs)
KWS/OT/RMLF/17/FY2020-2021	458,615.99
KWS/OT/RMLF/21/ FY2020-2021	329,475.00
KWS/OT/RMLF/22/2020-2021	979,838.85
KWS/OT/RMLF/43/2020-2021	176,128.80
KWS/OT/RMLF/44/2020-2021	226,371.60
KWS/OT/RMLF/52/2020-2021	381,506.00
KWS/OT/RMLF/54/2017-2018	492,270.00

Total	3,044,206
-------	-----------

48. The above rearrangement of items of work were done within the existing rates in the contract and did not exceed the contract sum.

#### Observations and Findings of the Committee

49. The Committee observed that:

- i. The Fund's contractors made provisions for contingencies amounting to Kshs.40,821,578 which were paid during the year under review however, the contract variation and amendments were neither reviewed by an evaluation committee/Accounting Officer nor submitted through the Head of Procurement;
- ii. Management was in breach of Regulation 132 (1) and (2) of the Public Procurement and Asset Disposal Regulations, 2020; and
- iii. The matter remained unresolved.

#### Recommendations of the Committee

50. The Committee recommends that:

- i. The Accounting Officer to ensure the resources of the Service are used in a way that is lawful and authorised and effective, efficient, economical and transparent in compliance with section 68(1) of the PFM Act 2012.
- ii. The Accounting Officer to ensure that all applicable accounting and Financial control systems, standards laws and procedures are followed when procuring or disposing of goods and services in compliance with section 68(2) of the PFM Act 2012.

#### c. Irregular Evaluation of Tender

51. As disclosed in Note 3 to the financial statements, the statement of financial performance reflects certified works amount of Kshs.801,351,143. Included in the amount is a payment of Kshs.22,852,288 to a contractor for routine maintenance of certain roads in Ruma National Park. The tender for purchase of routine maintenance of certain roads in Ruma National Park was advertised on MyGov publication on 28 September 2021. Four (4) bidders submitted their bids, two (2) bidders proceeded to technical and financial evaluation stages and a construction company were recommended for the award vide letter of notification of award dated 21 December 2021 at a winning bid price of Kshs.22,852,287.

52. The contractor accepted the offer and a contract signed on 14 January 2022. However, the following anomalies were noted:

- i. The winning bidder did not give the correct information with regards to litigation history in his bid documents which was a requirement. The bidder had an active court case at the Tax Appeals Tribunal under Appeal Number 132 of 2021 with regards to a tax arrears dispute with the Kenya Revenue Authority. In addition, the bidder submitted a bid document that was not well paginated which was a preliminary criterion. These two observations would have rendered the bidder; and non-responsive at the preliminary evaluation stage.

The contract awarded was not reported to the Authority as required under Regulation 60 of the Public Procurement and Asset Disposal Regulations, 2020. neither was the contract details uploaded into the Public Authority website as required under Section 138(1-3) of the Public Procurement and Asset Disposal Act, 2015. In the circumstances, Management was in breach of the law.

#### **Submissions by the Accounting Officer**

53. The Accounting Officer submitted that the committee depended on the bidder's response regarding litigation, which was confirmed through a power of attorney as an instruction for the tender process. He further elaborated that the absence of a procurement system had impeded the reporting and uploading of awarded contracts. The Service was collaborating with the National Treasury for the installation of IFMIS.
54. He further submitted that despite this challenge, quarterly reports containing the list of awarded contracts were prepared and submitted to the Authority and confirmed that the contracts are published on the KWS website.

#### **Observations and Findings of the Committee**

55. The Committee observed that;
- i. The management did not undertake comprehensive due diligence and awarded a contract to a bidder who had an active court case at the Tax Appeals Tribunal under Appeal Number 132 of 2021 with regard to a tax arrears dispute with the Kenya Revenue Authority;
  - ii. The contract awarded was not reported to the Authority as required under Regulation 60 of the Public Procurement and Asset Disposal Regulations 2020.
  - iii. The management was in breach of the law.
  - iv. The matter remained unresolved.

#### **Recommendations of the Committee**

56. The Committee recommends that:
- i. 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 in compliance with section 68(2)(e) of the Public Finance Management Act, 2012.
  - ii. Within three months of the adoption of this report the Public Procurement and Asset Disposal Authority to initiate investigation under section 35 of the Public Procurement and Asset Disposal Act, into the procurement and contract signed on 14 January 2022.

#### **d. Non-Rotation of the Ad Hoc Evaluation Committees**

57. A review of the various procurement processes for the certified works undertaken by the Fund during the year revealed that, the members of the Ad Hoc Evaluation Committees were not appointed on rotational basis since the same members evaluated very many tenders relating to

the Fund over the course of the two (2) financial years without being rotated as summarized below:

Tender Number	Evaluation Committee	Date of Appointment
KWS/OT/RMLF/06-30/2020-2021	Edwin Wanyonyi-Chair, Walter Ochieng-Member, Micah Aiyabei-Member and Peter Mathenge-Member	4 December, 2020
KWS/OT/RMLF/42,43&44/2020-2021	Edwin Wanyonyi-Chair, Walter Ochieng-Member, Micah Aiyabei-Member and Peter Mathenge-Member	8 March, 2021
KWS/OT/RMLF/50,51,52/2020-2021	Edwin Wanyonyi-Chair, Walter Ochieng-Member, Micah Aiyabei-Member and Peter Mathenge-Member	15 June, 2021
KWS/OT/RMLF/04-21/2021-2022	Edwin Wanyonyi-Chair, Walter Ochieng-Member, Micah Aiyabei-Member and Peter	28 October, 2021

58. This is contrary to Regulation 29(1)(a) of the Public Procurement and Asset Disposal Regulations, 2020 which states that, the ad hoc evaluation committee established and appointed under Regulation 28 of these Regulations shall consists of at least three (3) members appointed on rotational basis comprising heads of user departments or their representatives. In the circumstances, the Management was in breach of the law.

#### Submissions by the Accounting Officer

59. The Accounting Officer submitted that as mandated by Section 46(1) of the Act, the Service appointed an evaluation committee from the existing staff, incorporating individuals with the necessary expertise. The committee consisted of a chairman at the director level, a deputy director (Corporate Service) from the user department, a technical officer from the department (Roads), and the Head of Finance, all possessing the requisite expertise in the relevant procurement field.

60. He further submitted that committee members did not participate in any other procurement processes conducted by KWS during the specified period. He acknowledged that the management acknowledged the recommendation and commits to ensuring compliance with this requirement in future appointments of evaluation committees.

#### **Observations and Findings of the Committee**

61. The Committee observed that;

- i. The members of the Ad Hoc Evaluation Committees were not appointed on rotational basis over the course of the two (2) financial years contrary to the Public Procurement and Asset Disposal Regulations, 2020;
- ii. The matter remained unresolved.

#### **Recommendations of the Committee**

62. The Committee recommends that;

- i. **The Accounting Officer to always comply with the provisions of Regulation 29 of the Public Procurement and Asset Disposal Regulations in appointing members of the ad hoc evaluation committee.**
- ii. **Within three months of the adoption of this report the Public Procurement and Asset Disposal Authority to initiate investigation under section 35 of the Public Procurement and Asset Disposal Act, into the matter.**

#### **e. Anomalies in Tarmacking of 22 Kilometers Road at Amboseli National Park**

63. The Management awarded two (2) Contracts to carry out road works on twenty-two (22) kilometers Tarmac Road where each contractor was awarded 11kms. The first Contract agreement was entered into between Kenya Wildlife Service and a construction firm on 17<sup>th</sup> September 2021 for rehabilitation of Kimana Gate-Ngong VEG Farm (Road C103)/Kimana Gate-Amboseli Headquarters 11kms Road at a contract sum of Kshs.105,283,708 with a contract period of six (6) months. The second contract agreement was entered into between Kenya Wildlife Service and a Construction Company on 7 October 2021 to carry out rehabilitation of 11km of Ngong VEG Farm Gate Kimana JUNCT (Road C103) at a contract sum of Kshs.72,554,632 with a contract period of six (6) months.

64. However, the following anomalies were noted:

- i) Although the two sections of the roads are equal (11Km), the contract sum for each section was different. However, the Management has not explained the reasons for the variance of Kshs.32,729,076 in the contract sums for the roads. Audit inspection carried out during the month of July, 2022 observed that the construction works were not yet completed despite the expiry of six (6) months period stipulated in the contract;
  - ii) Further, the road diversions had a lot of dust as there was either very little or no water poured on the diversions, hence posing healthy risks to the tourists using the road to visit the park; and
  - iii) The Management did not provide approval documents to confirm contract extension.
65. In the circumstances, value for money may not have been derived from the two projects.

#### **Submissions by the Accounting Officer**

66. The Accounting Officer submitted that the above difference of Kshs.32,729,076 emanating from the comparison of the two contract sums was due to:

- a) He verified that the existing site conditions were varying along the longitudinal profile of the road from KM 0+000 TO KM 22+000. He also stated the specific needs on the various sections along the road informed their scope of works. Along Kimana gate - Ngong Veg Farm, the road profile was low and needed to be raised to avoid being washed off during the rains. He also added that this section of the road is in the low-lying region of Amboseli National Park and massive drainage work had to be carried out in this section. (Contracts were lotted into two different tenders with dissimilar site conditions). He therefore explained that each had a difference in quantities as per the bill of quantities. He noted that the Employer's budget for the two contracts as indicated in tender document page 21 (for both tenders were also different. He also stated that this declaration was known to all bidders during the tendering process.
- b) The rates for each item of work quoted by the two contractors were different.
- c) The other notable difference, was the supervision vehicle, attendance to resident Engineer's staff loaded on contract no KWS/OT/RMLF/50/2020-2021 as summarized in the table below:

S/No	Description	CONTRACT No. KWS/OT/RMLF/50/2020-2021	CONTRACT No. KWS/OT/RMLF/51/2020-2021	Remarks
1.	Contract Name	Rehabilitation of Kimana Gate-Ngong Veg Farm (Road C103)/Kimana Gate Amboseli Park Head quarters	Rehabilitation of Ngong Veg Farm Gate-Kimana Junct (Road C103)	
2.	2 Employer's Budget (KES)	120,000,000.00	100,000,000.00	The Employer's budget for the two contracts as indicated in tender document page 21 (Appendix to Instruction to bidders) for both tenders was also different. See

				Annex VIII
3.	Contract Sum(KES)	105,283,708.99	72,554,632.65	
<b>Selected Major Differences in Scope of items of Work</b>				
4.	Contract Length(KM)	13.3	10.8	
5.	Tarmac length (KM)	11	10.8	
6	Gravelling Length (KM)	2.3	Nil	
7	Earthworks Quantities (M3)	13,608	8,748	Contract No. KWS/OT/RMLF/50/2020-2021 required more fill to raise the existing road profile than contract KWS/OT/RMLF/51/2020-2021
8	Protection works using gabions	640	1,240	Contract No. KWS/OT/RMLF/50/2020-2021 was located at a low lying area experiencing drainage issues as opposed to Contract No. KWS/OT/RMLF/51/2020-2021

#### Observations and Findings of the Committee

67. The Committee observed that:

- i. The difference between the Kshs.32, 729,076 emanating from the comparison of the two contract sums was due to the varying scope of works for the two sections of the road in which the Auditor General verified.
- ii. The two contracts of Kimana Gate-Ngong VEG Farm (Road C103)/Kimana Gate-Amboseli Headquarters and Ngong VEG Farm Gate Kimana JUNCT (Road C103) were complete and are in use.
- iii. Management did not provide documentary evidence of approval for the extension of the contract
- iv. The matter is partially resolved.

#### **Recommendations**

**The Committee recommends that—**

Within three months of the adoption of this report, the Accounting Officer to provide documentary evidence of the approval for extension of the contract and the effect of the extension to the contract sum to the Auditor General for verification.

#### **f. Budget Over-Expenditure**

68. The statement of comparative budget and actual amounts reflects total budgeted expenditure of Kshs.651, 338,776 against actual expenditure of Kshs.830,231,819 resulting in over-expenditure of Kshs.178,893,043 or 127% of the total budget. The Fund operated over and above the approved budget for the year contrary to the Appropriation Act, 2018, the Supplementary Appropriation Act, 2018 and Regulation 43(b) of the Public Finance Management (National Government) Regulations, 2015.
69. In the circumstances, Management was in breach of the law.

#### **Submissions by the Accounting Officer**

70. The Accounting Officer submitted that a total expenditure of Kshs. 830,231,819, comprised of Kshs. 801,351,143.47 allocated to road works and Kshs. 28,880,676 designated for administrative activities during the reviewed year. He explained that within the sum, Kshs. 459,249,477.13 represented funds carried-over for ongoing projects, with certificates finalized for payment in the same period. He clarified that Kshs. 370,982,342 accounted for the actual works and administrative tasks conducted during the reviewed year, funded from the budget of Kshs. 651,338,776 for the financial year 2021/2022.

#### **Observations of the Committee**

71. The Committee observed that;

- i. Management overspent Kshs. 178,893,043 or 127% of the total budget allocation of Kshs.651, 338,776 in contravention of Regulation 43(b) of the Public Finance Management (National Government) Regulations, 2015.
- ii. Kshs.459, 249,477.13 was relating to brought forward funds for ongoing works whose certificates crystalized for payment during the year under review.
- iii. The matter remained unresolved.

### Recommendations of the Committee

72. The Committee recommends that;

- i. Within three months upon the adoption of this report, the Accounting Officer to provide a list of all projects of the previous year and current year that rolled over to the Auditor General for audit verification; and
- ii. The Accounting Officer to ensure that all applicable accounting and financial controls, systems, standards, laws, and procedures are followed in the preparation of the financial statements in compliance with Public Finance Management Act, 2012 and in accordance with the standards prescribed by the Public Sector Accounting Standards Board as per Regulation 101(4) of the Public Finance Management (National Government) Regulations, 2015.

### REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

#### g. Non-Maintenance of an Imprest Register

73. The statement of financial performance reflects amount of Kshs.28,880,676 in respect of other roadworks expenses as disclosed in Note 4 to the financial statements. Included in the expenditure is an amount of Kshs.10,105,175 which was incurred on domestic travel and subsistence. However, no imprest register was provided for audit review.

74. This is contrary to Regulation 93(4, c) of the Public Finance Management (National Government) Regulations, 2015 which requires the Accounting Officer to ensure that the applicant of the temporary imprest has been recorded in the imprest register including the amount applied for. In the circumstances, effective management of imprest register could not be confirmed.

#### Submissions by the Accounting Officer

75. The Accounting Officer submitted that management oversees the maintenance of both soft and manual Imprest registers. He confirmed that the soft copy has since been updated and was ready for audit verification. He also stated the new guidelines on imprest management, aimed at addressing any shortcomings, had been introduced and implemented by management through a circular dated May 31, 2023.

### Observations of the Committee

76. The Committee observed that;

- i. An imprest register was not provided for audit review and hence, an amount of Kshs. 10,105,175 issued as imprest was not verified.
- ii. Management has prepared a soft copy of the Imprest register which was not verified.
- iii. The matter remained unresolved.
- iv.

#### Recommendations of the Committee

77. The Committee recommends that:

- i. Within three months upon the adoption of this report the Accounting Officer to submit the updated imprest register and supporting documentation relating to Kshs.10,105,175 to the Auditor General for audit verification;
- ii. The Accounting Officer to comply with the provisions Regulation 93(4) of the Public Finance Management (National Government) Regulations, 2015 which requires that the applicant of the temporary imprest should be recorded in the imprest register including the amount applied for; and
- iii. The Accounting Officer ensures that all applicable accounting and financial controls, systems, standards, laws, and procedures are followed in the preparation of the financial statements in compliance with Public Finance Management Act, 2012 and in accordance with the standards prescribed by the Public Sector Accounting Standards Board as per Regulation 101(4) of the Public Finance Management (National Government) Regulations, 2015.

#### h. Irregularities in the Management of Temporary Imprest

78. The statement of financial performance reflects amount of Kshs.28,880,676 in respect of other roadworks expenses as disclosed in Note 4 to the financial statements which includes domestic travel and subsistence amount of Kshs.10,105,175. Included in the expenditure is an amount of Kshs.5,042,380 irregularly paid out to officers in form of group temporary imprest. This is contrary to Regulation 91(2) of Public Finance Management (National Government) Regulations, 2015 on Management of imprest which provides for issue of imprest to individual and not to a group.
79. Further, it was also not possible to confirm whether each officer individually accounted for the imprests received as required by Regulation 93(5) of the Public Finance Management (National Government) Regulations, 2015. In addition, there was no evidence to show that the officers received the imprests as some officers did not sign on the payment schedules attached to the vouchers. In the circumstances, efficient and effective controls in management of temporary imprest could not be confirmed.

#### Submissions by the Accounting Officer

80. The Accounting Officer submitted that the imprests underwent proper processing, approval, authorization, and utilization for their designated purposes. He clarified that individual officers also sign payment vouchers as acknowledgment of receiving the funds. He stated the new guidelines for imprest management, aimed at rectifying any deficiencies, had been introduced and implemented by management. He further confirmed that these guidelines are detailed in a circular dated May 31, 2023.

#### Observations of the Committee

81. The Committee observed that;

- i. Management issued and paid imprest of Kshs. 5,042,380 to officers as group temporary imprest instead of being paid to individuals, contrary to Regulation 93(12) of the PFM National Government Regulations, 2015.
- ii. The matter is unresolved.

Recommendations of the Committee

82. The Committee recommends that;

The Accounting Officer to comply with Regulation 93(12) of the PFM National Government Regulations, 2015 when issuing imprest.

MIN. NA/AA&GPC-SFAC/2024/016: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at 12.51 p.m. The next meeting will be held on Friday 23<sup>rd</sup> February 2024 at 2.00pm.

SIGNED.....*Fatuma*.....DATE 17/08/2024.....

HON. FATUMA ZAINAB MOHAMMED, MP

(CHAIRPERSON)

SPECIAL FUNDS ACCOUNTS COMMITTEE

**MINUTES OF THE 6<sup>TH</sup> SITTING OF SPECIAL FUND ACCOUNTS COMMITTEE  
HELD ON FRIDAY, 23<sup>RD</sup> FEBRUARY 2024, IN GARDEN SUITE CONFERENCE ON 6<sup>TH</sup>  
FLOOR, HILTON GARDEN HOTEL AT 2.00PM.**

---

**PRESENT**

1. Hon. Fatuma Zainab Mohammed, MP - Chairperson
2. Hon. Erastus Kivasu Nzioka, MP
3. Hon. Charles Ngusya Nguna, MP
4. Hon. Eve Akinyi Obara, MP
5. Hon. Tom Mboya Odege, MP
6. Hon. Catherine Nakhabi Omanyoo, MP
7. Hon. Cecilia Asinyen Ngigit, MP
8. Hon. Joseph Kimutai Cherorot, MP
9. Hon. Paul Kibichi Biego, MP

**APOLOGIES**

1. Hon. Dawood Abdul Rahim, HSC, MP - Vice Chairperson
2. Hon. Faith Wairimu Gitau, MP
3. Hon. Joseph Majimbo Kalasinga, MP
4. Hon. Dr. Christine Ombaka Oduor, MP
5. Hon. Joshua Odongo Oron, MP
6. Hon. Kahugu Erick Mwangi, MP

**OFFICE OF THE AUDITOR-GENERAL**

1. Mr. David Osiemo - Liason Officer.
2. Mr. Simon Kiiriba - National treasury

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Erick Nyambati - Clerk Assistant I
2. Ms. Comfort Achieng - Clerk Assistant III
3. Mr. Nimrod Mate - Clerk Assistant III
4. Mr. Robert Ngetich - Fiscal Analyst II
5. Ms. Judith Kanyoko - Legal Counsel II
6. Mr. Derrick Kathurima - Media Relations Officer
7. Ms. Pauline Sifuma - Hanasard Reporter II
8. Mr. Benard Omondi - Sergeant-at-arms
9. Mr. Abdifatah Mahat - Attachee

**MIN. NA/AA&GPC-SFAC/2024/017:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 2.32 Pm, followed by a word of prayer and introductions. The following agenda was adopted as circulated:

1. Prayers
2. Preliminaries/Introductions
3. Report Writing on Consideration of the Auditor General Reports on Accounts of the Road Maintenance Levy Fund Kenya National Highways Authority for the Financial Years 2020/2021 and 2021/2022.
4. Any Other Business
5. Adjournment Date of the next meeting.

MIN. NA/AA&GPC-SFAC/2024/018: REPORT WRITING ON CONSIDERATION OF THE AUDITOR GENERAL REPORTS ON ACCOUNTS OF THE ROAD MAINTENANCE LEVY FUND (KENYA NATIONAL HIGHWAYS AUTHORITY) FOR THE FINANCIAL YEARS 2020/2021 AND 2021/2022

**EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE ROAD MAINTENANCE LEVY FUND (KENYA NATIONAL HIGHWAY AUTHORITY) FOR THE FINANCIAL YEAR 2020/2021 AND 2021/2022**

1. Eng. Kung'u Ndung'u, the Director General, Kenya National Highway Authority appeared before the Committee on Wednesday 22<sup>nd</sup> November 2023 to adduce evidence on the audited financial statements for the Road Maintenance Levy Fund for the Financial Years 2020/2021 and 2021/2022. The minutes of the Committee sitting, and submissions tabled by the Accounting Officer are annexed to this report. He was accompanied by:

1. Eng. Daniel S Cheron - Director Maintenance
2. Mr. Stephen Ngang'a - Assistant Director Finance
3. Mr. Samuel Gatiba - Senior Accountant
4. Mr. James Bowan - RMLF (KENHA)

**3.1 Examination of the report of the Auditor-General for the Financial Year 2020/2021**

**a. Unsupported Cash and Cash Equivalents**

2. The statement of financial position reflects cash and cash equivalents balance of Kshs 10,197,835,027 as disclosed in note 5 to the financial statements. The balance includes a call deposit balance of Kshs 981,255,555 for which a bank reconciliation statement was not provided for audit. In the circumstances, the accuracy and completeness of the call deposit balance of Kshs 981,255,555 could not be confirmed.

**Submissions by the Accounting Officer**

3. The Accounting officer submitted that the Authority places not-immediately-required funds in high yielding call deposits in line with the National Treasury Circular No. 4/2017. He stated that considering this guideline the Authority placed Kshs 1,500,000,000 in Co-operative Bank Call deposit account out of which Kshs 981,255,555 was from Fuel Levy Fund awaiting payment for certified work done by Contractors. He stated that A certificate

of bank balance of Kshs 1,500,000,000 from the Co-operative Bank call deposit account as at 30<sup>th</sup> June 2021 was provided to the Auditor and attached.

#### **Observations of the Committee**

4. The Committee observed that:
  - i. The Authority placed funds that were not-immediately-required in high yielding call deposits in line with the National Treasury Circular No. 4/2017.
  - ii. A bank reconciliation statement for a call deposit balance of Kshs 981,255,555 was provided for audit verification.
  - iii. The bank certificate for Co-operative Bank call-deposit account was provided and verified.
  - iv. The matter is resolved.

#### **b. Variance in Development Project Expenses**

5. The statement of Financial Performance reflects development projects expenses amount of Kshs 2,074,878,851 as disclosed under note 3 to the financial statements. However, Kenya Roads Board records reflects Kshs 2,100,000,000 for the same resulting in an unexplained and unreconciled variance of Kshs 25,121,149. In the circumstances, the accuracy and completeness of development projects expenses amount of Kshs 2,074,878,851 could not be confirmed.

#### **Submissions by the Accounting Officer**

6. The Accounting officer submitted that as indicated in the schedule from the State Department of Infrastructure, the amount of Kshs 25,121,149 was not received by the Authority from Ministry of Transport Infrastructure Housing and Urban Development (MOTIHUD). He stated that the Authority could only account for the funds it received.

7.

#### **Observations of the Committee**

8. The Committee observed that;
  - i. The Authority accounted for Kshs. 2,074,878,851 received from the Kenya Roads Board;
  - ii. The amount of Kshs 25,121,149 was not disbursed and received by the Authority from Ministry of Transport Infrastructure Housing and Urban Development (MOTIHUD).
  - iii. An unreconciled balance of Kshs. 25,121,149 for development projects expenses was explained; and
  - iv. The matter remains unresolved.

#### **Recommendations of the Committee**

9. The Committee recommends that;
  - i. Within three months of the adoption of this report, the Ministry of Transport Infrastructure Housing and Urban Development (MOTIHUD) to disburse the amount of Kshs.25,121,149 owed to Kenya National highways Authority (KENHA) ; and

- ii. The Accounting Officer to ensure that the financial reports reflect a true and fair financial position of the entity in compliance with Regulation 23(2)(d) of the Public Finance Management (National Government) Regulations 2015.

**c. Emphasis of Matter**

10. As disclosed in note 13 to the financial statements, the Fund Financial statements were prepared using the 2020/2021 Financial year as the base year and therefore no comparative balances were reflected.

**Submissions by the Accounting Officer**

11. The Accounting officer submitted that the Fund's transactions were previously accounted for in the Authority's main financial statements. He stated that the communication to prepare separate financial statements was done on 14<sup>th</sup> April 2021 as per a letter from the Auditor - General.

**Observations of the Committee**

12. The Committee observed that;
  - i. The communication requiring the Authority to prepare separate financial statements was done on 14<sup>th</sup> April 2021 and the same was verified by the Auditor General.
  - ii. The matter is resolved.

**Other Matter**

**d. Budgetary control and Performance**

13. The statement of comparison of budget and actual amounts reflects actual expenditure on Kshs 21,686,652,587 against a budgeted amount of Kshs 29,039,333,029 resulting in under-absorption of Kshs 7,352,679,442 or 25% of the budget. The under absorption affected the planned activities and may have impacted negatively on service delivery to the public.

**Submissions by the Accounting Officer**

14. The Accounting officer agreed with the audit observation that the statement of comparison of budget and actual amounts reflected actual expenditure of Kshs 21,686,652,587 against a budgeted amount of Kshs 29,039,333,029 resulting in under-absorption of Kshs 7,352,679,442 or 25% of the budget.
15. He further submitted that this resulted from delayed commencement of some maintenance projects resulting from contractors' delayed submission of Performance Bonds and All Risk Insurance policies. He however, noted that most of the contractors who delayed in commencing works expedited maintenance works during the financial year with the intention of recovering lost time. He explained that the underspent amount of Kshs. 7,352,679,442 as indicated above was fully absorbed by the respective projects within the 1st quarter of the FY 2021/2022.

### Observations of the Committee

16. The Committee observed that;

- i. The Authority's actual expenditure was Kshs 21,686,652,587 compared to the budgeted amount of Kshs 29,039,333,029 resulting in an under-absorption of Kshs 7,352,679,442 or 25% of the budget.
- ii. The under-absorption was occasioned by delayed commencement of some maintenance projects which resulted from contractors' delayed submission of Performance Bonds and all Risk Insurance policies. The Authority did not adduce documentary evidence of the intended absorption of the Kshs. 7,352,679,442
- iii. The matter is unresolved.

### Recommendation of the Committee

Within three months of the adoption of this report, the Accounting Officer to provide supporting information on the Kshs 7,352,679,442 or 25% to the Auditor General for audit verification.

### 3.2 Examination of the report of the Auditor-General for the Financial Year 2021/2022

#### a. Unreconciled Difference between Unpaid Projects Amounts and Cash and Cash Equivalents Balance

17. A review of the Annual Public Roads Program (APRP) indicates that the Fund had an approved budget of Kshs.28,266,494,344 covering a total of 462 road projects for the year ended 30 June, 2022. The budget was fully funded by Kenya Roads Board during the year. Further review indicates that payments totalling to Kshs.25,408,126,383 were made for work done leaving an un-paid balance of Kshs.2,858,367,961 as at 30 June, 2022.
18. However, the statement of financial position reflects cash and cash equivalents balance of Kshs.1,707,746,685 which is less than the unpaid balance of Kshs.2,858,367,961. The difference of Kshs.1,150,621,276 had not been reconciled. In the circumstances, the accuracy of the financial statements could not be confirmed.

#### Submissions by the Accounting Officer

19. The Accounting officer agreed with the audit observation that the cash balance in the RMLF bank account as at 30<sup>th</sup> June 2022 was Kshs. 1,707,746,685 whereas the unspent budget at the same time was Kshs. 2,858,367,961.
20. He submitted that the cash at bank amounting to Kshs. 1,707,746,685 was for receipts net of payments whereas the carry over balance of Kshs. 2,858,367,961 was the approved budgeted resources for road maintenance works that had not been absorbed either through payment or accrual of road maintenance expenses as at 30<sup>th</sup> June 2022.
21. He further submitted that the Authority accrues its expenses and recognizes them in its books of accounts as expenditures even if not yet paid as opposed to cash accounting which

only recognizes expenses once paid. In this regard, unabsorbed resources would not equal the cash in the bank.

#### **Observations of the Committee**

22. The Committee observed that:

- i. Cash at the bank amounting to Kshs.1,707,746,685 was for receipts net of payments whereas the carry over balance of Kshs.2,858,367,961 was the approved budgeted resources for road maintenance works that had not been absorbed as at 30<sup>th</sup> June 2022.
- ii. The Authority uses the accrual reporting framework where it accrues its expenses and recognizes them in its books of accounts as expenditures even if not yet paid.
- iii. The matter is resolved.

#### **b. Road Maintenance Levy Fund**

23. The statement of financial performance and as disclosed in note 1 to financial statements reflects funds received from Kenya Roads Board (KRB) amounting to Kshs 32,373,684,084. However, records maintained by Kenya Roads Boards reflects disbursements totalling to Kshs 44,342,887,917 resulting to a variance of Kshs 11,969,203,833 which was not reconciled or explained. In the circumstances, the accuracy and completeness of Road Maintenance Levy Fund amount of Kshs 32,373,684,084 could not be confirmed.

#### **Submissions by the Accounting Officer**

24. The Accounting officer submitted that agreed with the audit observation that the statement of financial performance and as disclosed in Note 1 to the financial statements, reflected funds received from Kenya Roads Board (KRB) amounting to Kshs.32,373,684,084 (which included receivable of Kshs.11,865,854,651 as at 30<sup>th</sup> June 2022) as opposed to KRB records which indicated a total disbursement of Kshs. 44,342,887,917 which as per their observation, the above included a surplus of Kshs. 7,492,857,000 and a payable of Kshs.10,257,336,917.
25. He further submitted that Kshs. 32,373,684,084, reflected in the Authority's books, was arrived at after due consideration of reliable documents from the Kenya Roads Board in line with Accounting for Government Grants as contained in International Public Sector Accounting Standards.
26. He further explained that the Authority is not aware of the alleged Kshs. 44,342,887,917 recorded in the Board's books neither was the Kshs. 44,342,887,917 disbursed to the Authority in the financial year ended 30<sup>th</sup> June 2022.
27. He clarified that the Authority received a total of Kshs. 32,373,684,084 from KRB through the State Department for Infrastructure being RMLF for FY 2021/2022.

### **Observations of the Committee**

28. The Committee observed that:

- i. Management supported the receipts of amounts totaling Kshs.32,373,684,084.
- ii. The KRB records indicated that the Board disbursed Kshs. 44,342,887,917 disbursed to the Authority while KENHA indicated that it received a total of Kshs. 32,373,684,084 from KRB resulting in an unreconciled of a variance of Kshs.11,969,203833 and
- iii. The matter remained unresolved.

### **Recommendations of the Committee**

29. The Committee recommends that;

within three months of the adoption of this report, the Accounting Officer to reconcile the variance of Kshs.11,969,203,833 with KRB for disbursed funds and submit supporting documentation to the Auditor -General for audit verification;

#### **c. Unauthorized Retention of Receipts**

30. The statement of financial performance reflects finance income of Kshs.149,517,064 being interest earned from Road Maintenance Levy Fund (RMLF) funds and other income of Kshs.9,177,581 in respect to liquidated damages charged to various contractors both totalling to Kshs.158,694,645. However, the amounts were not appropriated in the Authority's budget which is an indication that the revenue should have been surrendered to the National Treasury. No evidence was provided to indicate that the amount was surrendered to the National Treasury.
31. In the circumstances, the revenue amount of Kshs.158,694,645 was irregularly retained and expended by the Authority.

### **Submissions by the Accounting Officer**

32. The Accounting officer refuted the audit observation that interest income and liquidated damages both totalling to Kshs. 158,694,645 was not appropriated in the Authority's budget for FY 2021/2022. He noted that the interest income and liquidated damages were included in the Operations and Administration Budget for FY 2021/2022 which had provisions of Kshs. 870,000,000 and Kshs. 50,000,000 for Interest income for all bank accounts and other incomes which include liquidated damages for all projects.
33. He further submitted that the Operations & Administration Budget FY 2021/2022 was approved by the Authority's Board of Directors on 28<sup>th</sup> January 2021 and duly uploaded onto the GIMIS platform on 17<sup>th</sup> February 2021.
34. He also stated that a copy of the detailed Operations & Administration Budget for FY 2021/2022 that was approved by the Board, extracts of the minutes of the 138<sup>th</sup> Board meeting held on 28<sup>th</sup> January 2021 that approved the Operations & Administration Budget and GIMIS print out of the uploaded signed budget for FY 2021/2022 were approved for verification.

### Observations of the Committee

35. The Committee observed that;

- i. The interest income and liquidated damages were included in the Operations and Administration Budget for FY 2021/2022 which had provisions for Interest income for all bank accounts and other incomes which include liquidated damages for all projects;
- ii. The authority provided the approved budget incorporating the expected interest for the year; and
- iii. The matter is resolved.

### Report on Lawfulness and Effectiveness in use of Public Resources

#### d. Anomalies noted during Projects Inspection

36. Physical verification carried out in the month of February 2023 revealed delayed works on various projects in different regions as highlighted below:

#### 1.1 Nakuru Region

##### i. Performance Based Contract for Maintenance of Narok –Ngoswani (B131) Road

37. Performance Based Contract for Maintenance of Narok–Ngoswani (B131) road was awarded to a contractor vide contract No.KeNHA/RD/RA&CM/3360/2021 at a contract sum of Kshs.310,166,470. The works were to commence on 16<sup>th</sup> August 2021 for a period of 36 months. The expected date of completion is 15<sup>th</sup> August 2024. Progress status report as at 30 June, 2022 indicated 5.85% physical progress versus 31% elapsed time. Physical inspection conducted in February 2023 indicated physical progress of 30.04% against 50.04% elapsed time an indication that the project was behind schedule.

38. A review of correspondence indicates that the contractor has failed to comply with contract conditions where he was to cover excavated potholes at Km 7+600, Km 12+800, Km 10+800 and Km 16+200 within 48 hours as specified in the contract conditions. There was however no evidence of damages deductions from the contractor despite express authority vide Section 47.1 (b) of the conditions of the contract specifying that Kshs.50,000 per month per pothole will be deducted from the contractor as damages for not attending to potholes within 48 hours of excavation.

39. It was further noted that the contractor has been given three notices on slow progress which is an indication of no improvement by the contractor. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

#### Submissions by the Accounting Officer

40. The Accounting officer agreed with the Audit observation that at the time of physical inspection in February 2023, physical progress was at 30.04% against time elapsed of 50.04% indicating that the project was behind schedule.

41. He submitted that there was significant improvement in physical progress noted and as at 31st March, 2023, progress stood at 36% compared to 5.58% as at the date when the last notice of slow progress was issued.
42. He also submitted that it was anticipated that if the contractor continued with the same pace of work, they would not be able to complete the works on time as provided for in the works contract.
43. He further submitted that the potholes were rectified by the contractor and the deductions for the initial non-compliance amounting to Kshs. 200,000 in line with clause 47.1 (b) of the Contract and was applied in IPC No. 4. as liquidated damages.

#### **Observations of the Committee**

44. The Committee observed that:

- i. The latest project briefs indicated that the contractor had made noticeable progress in implementation of the works;
- ii. The potholes were rectified by the Contractor and the deductions for the initial non-compliance) of the Contract was applied as liquidated damages; and
- iii. The matter is resolved.

#### **ii) Periodic Maintenance of Njoro- Mau Summit (B129)**

45. Periodic Maintenance of Njoro-Mau Summit (B129) was awarded vide contract No.KeNHA/RD/RA&CM/3396/2021. The works were to commence on 26<sup>th</sup> August 2021 for a period of eighteen (18) months with completion date of 25 February, 2023. Physical verification in February, 2023 revealed 80.20% physical progress against 95.45% elapsed time an indication that the project was behind schedule.

46. The following observations were also made; The contractor had not done surface dressing works on 7 km and river training works. The road shoulders in Keringet area were being swept away and had not been repaired though work was paid for and putting to question the quality of shoulder works. In the circumstances, the project may not have been executed as scheduled which impacted negatively on realization of value for money by the public.

#### **Submissions by the Accounting Officer**

47. The Accounting officer agreed with the Audit observations that the contractor, as at the time of physical verification audit, had not done surface dressing works on 7 km and river training works. He further agreed that the road shoulders in Keringet area were being swept away and had not been repaired though works executed had already been paid for.

48. He submitted that the contractor substantially completed the works on 24th February 2023 including the 7km of surface dressing that was outstanding. The contractor requested the project inspection, and the process was done to all projects before the project take over. Further an Inspection & Acceptance Committee has been constituted to carry out the exercise and prepared a report for Management consideration. Minutes of the Inspection

and Acceptance Committee for Periodic Maintenance of Njoro-Mau Summit (B129) were provided for verification.

#### **Observations of the Committee**

49. The Committee observed that;

- i. As per the Authority's response, the contractor has substantially completed the project works including the 7km of surface dressing that was outstanding, and inspection done; and
- ii. The matter is resolved.

#### **1.2 Garissa Region**

i. **Performance Based Contract for Maintenance of Junction (B89) Madogo (B89)- Modika (A3) Road**

50. The contract was awarded to a contractor on 30 April 2020 at a contract sum of Kshs.119,420,356.86 for a period of 24 months. The contract was to be completed on 27 November 2022. Cumulative amount certified as at the time of audit in February 2023 was Kshs.46,686,506.98.

51. The following were noted during physical inspection.

- (i) There were no signs that the contractor was on site,
- (ii) There were blocked culverts especially in Garissa Town while works was still incomplete.
- (iii) Drainage have dumped garbage and overgrown vegetations,
- (iv) Most road signs had been vandalized,
- (v) De-siltation of drainage and culverts as detailed on the contract was not done in Garissa Town,
- (vi) Between the main bridge separating Garissa town towards Madogo, there are conspicuous and strong erosion of the road side especially the road shoulders and the road reserves have undesirable overgrown vegetation which were supposed to have been cleared as per the contract.

52. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

#### **Submissions by the Accounting Officer**

53. The Accounting Officer agreed with the Audit observations on the items noted during physical inspection. He provided that the contract, KeNHA/RD/RA&CM/3009/2020 commenced works on 28th May 2020 and ended 27th May 2022. He explained that the contract performed well initially but faced various challenges during the implementation of the project.

54. He submitted that several initiatives by the Project Team to have the Contractor perform did not bear fruit. Consequently, the contract was terminated on 25th August 2022 and the contractor was charged full liquidated damages of Kshs. 5,971,017.84 and the balance of the contract sum of Kshs. 47,334,974.96 went to the procurement of a new contract.

55. He further submitted that a new contract No. KeNHA/RD/RA&CM/3714/2022 (Lilaaf Construction Co. Ltd.) was procured and has addressed the outstanding project issues. Extracts of the contract No. KeNHA/RD/RA&CM/3714/2022 was attached.

#### **Observations of the Committee**

56. The Committee observed that;
- i. The Contract was terminated the Contractor was charged full liquidated damages of Kshs. 5,971,017.84 and the balance of the contract sum of Kshs. 47,334,974.96 went to the procurement of a new contract;
  - ii. A new contractor was put in place and substantial works had been done; and
  - iii. The matter is resolved.

#### **1.3 Central Region**

##### **Performance Based Contract for Maintenance of Junction B21 Nyeri-Othaya-**

57. The contract was awarded to a contractor on 29 September 2020 at a contract sum of Kshs.177,595,014 for a period of 36 months. The completion date for instructed works was 16 November, 2021. The contractor's all risk expiry date was expected on 22 January, 2024. The amount certified for payment as at 31 January, 2023 was Kshs.128,597,863.32.
58. As at the time of audit in February 2023, it was noted that potholes were observed on shoulders of some sections of the road, damaged guardrails were conspicuously seen at KM 0+000, litter along some sections of road drainage channels especially at around 33 Km, there was vegetation at around 41Km that had grown beyond the PBC height requirements and some asphalt applied on some road pavement section was failing.
59. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

#### **Submissions by the Accounting Officer**

60. The Accounting Officer agreed with the Audit observations and submitted that the Contractor's All Risk Insurance was necessary throughout the duration of the contract even after completion of instructed works. The contractor was advised to extend the validity of the All-Risk Insurance Cover prior to the expiry of the running insurance cover which was to expire on 22nd January 2024.
61. He further submitted that the balance of the contract sum amounting to Kshs. 48,997,151 was for PBC works up to 31st January 2024. In line with the PBC contractual provisions and given that this was a very aged pavement the contractor had patched the noted and emerging potholes as well as the damaged guardrails which was a continuous activity during the duration of the contract in the PBC context.
62. He also submitted that in the same PBC context, the littering cited at km 33 and vegetation at km 41 was addressed and Penalties of Kshs. 675,405.87 was levied for the noted non-compliance as provided for in the contract. Extracts of IPCs with deducted amounts were attached Appendix KENHA/SFAC/FY22-23/8. Further the patchwork to maintain

motorability on the aged pavement was a continuous process and where non-conformity was cited penalties have been instituted.

#### **Observations of the Committee**

63. The Committee observed that;

- i. The contractor has patched potholes, littering cited at km 33 and vegetation at km 41 was addressed, and penalties of Kshs. 675,405.87 were levied for the noted non-compliance as provided for in the contract.
- ii. The Authority provided evidence of recovery through deductions made on the contractor's measurement sheets.
- iii. The matter is resolved.

#### **ii. Performance Based Contract for Maintenance of JN B23/27 Othaya –JN A 2/B 27 Karatina (B27)**

64. Contract No. KeNHA/RD/RA&CM/2951/2020 was awarded to a contractor on 10 March, 2020 at a contract sum of Kshs.49,460,633.20 for a period of 36 Months. Contractor's all risk insurance policies expiry date is expected on 18 June, 2023. Amount certified for payment as at 31 January, 2023 was Kshs.44,418,053.64.

65. Physical verification in February 2023, revealed litter and silt in culverts at Karatina town. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

#### **Submissions by the Accounting Officer**

66. The Accounting Officer agreed with the audit observation that the Contractor's all risk cover was expiring on 18 June, 2023 and that there was litter and silt in culverts within Karatina town.

67. He submitted that the culverts were cleared of all blockages and the project team had enhanced supervision to ensure that the contractor continuously cleared any culvert blockages that may arise within the current rainy season. He also noted regarding the contractor's All Risk insurance cover, Management was confident that the works would be completed prior to the expiry of the insurance cover on 18<sup>th</sup> June 2023. Attached were copies of photographs showing the latest position on the ground.

#### **Observations of the Committee**

68. The Committee observed that;

- i. The culverts were cleared of all blockages and management has enhanced supervision to ensure that the contractor continuously cleared any culvert blockages that may arise within the current rainy season.
- ii. Management indicated that works would be completed prior to the expiry of the insurance cover.
- iii. The matter is resolved.

iii. **Performance based Contract for Maintenance of JN A2 Karatina - Kagumo-Kutus (B27) Road\**

69. The contract was awarded on 29 September 2020 at a contract sum of Kshs.374,379,713. The date of order to commence was 4<sup>th</sup> December 2020 with a completion period of 36 months. The revised contract sum was Kshs.464,340,178.70 surpassing the original contract sum by Kshs.89,960,465.70 or 24%. The amount certified as at the time of progress report in the month of January 2023 was Kshs.341,534,226.96. The expected completion date is 17<sup>th</sup> December 2023. The Management did not provide reasons for revising the contract price upwards. Further, in Kagumo town, some access culverts had overgrown vegetation that could not allow free surface flow of rainwater.

70. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

**Submissions by the Accounting Officer**

71. The Accounting officer submitted that the upward contract revision arose from the need to address the erratic failure witnessed on the road which had threatened to cut off the road. The variation report detailing the noted failures and intervention measures required was approved by the Employer as per the copy of variation order.

72. He also submitted that the issue of overgrown grass had since been addressed by the Contractor and additional instructions to the Contractor to ensure that he maintained grass height to the required standards as provided in the contract had been conveyed. He further noted that resulting from the above instructions, the grass within Kagumo town on the two culvert locations arising from mudslide had since been controlled and the resulting mud is continuously carted away as and when it arises.

**Observations of the Committee**

73. The Committee observed that:

- (i) Management provided supporting documents on the approval of contract sum of Kshs. 374,379,713 thus a variation of Kshs. 89,960,465.70 or 24% for verification;
- (ii) The grass has been maintained to the required standard the Contractor and additional instructions given to the Contractor to ensure that he maintained grass height to the required standards; and
- (iii) The matter is resolved.

**1.4 Isiolo Region**

i. **Periodic Maintenance of Ruiru – Isiolo**

74. The tender was awarded at a contract amount of Kshs.682,103,815. The contract commenced on 14 December 2020 and the initial date for completion was 14 December 2022. However, at the time of audit inspection, the project was lagging schedule with the progress of work at 82.6 percent against over 100%-time lapse. According to a letter dated 14 December 2022 by the Regional Director to the contractor, it was noted that on some road pavements, the contractor had used AC material that had failed to meet the minimum

laboratory requirements for AC Type 1. The affected sections were Km 13+300 right hand side and Km 15+220 to km 15+770.

75. It was also noted that the above-mentioned irregularity could negatively affect the quality of the affected sections of the road. Several road signage's had been vandalized and the contractor had not been issued with instructions to correct the works. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money by the public.

#### **Submissions by the Accounting Officer**

76. The Accounting officer submitted that the contractor requested for extension of time due to supply delays. He indicated that the merit of the request was evaluated and granted.
77. He further that the contractor cited three weeks break to allow workers to vote in August 2022 General Election as other causes of delays for which he was entitled to time extension.
78. He also submitted that the AC Type 1 used by the contractor failed marginally in stability, but the rest of the parameters met the required specification. The sampling and testing of AC was done after laying, the matter was brought up to the attention of the contractor for information and product adjustment. Subsequently the contractor was informed that affected sections will be observed during the one-year Defects Liability Period (DLP). So far, the section has been performing well. Further a corrective order had since been issued to the contractor for their action.

#### **Observations of the Committee**

79. The Committee observed that:
- i. The contractor, used AC material on some road pavements that had failed to meet the minimum laboratory requirements for AC Type 1.
  - ii. The Authority had provided evidence of issuance of a correction order.
  - iii. The AC Type 1 used by the Contractor failed marginally in stability,
  - iv. The suitability of the material is still awaiting the end of the defects liability period to be confirmed.
  - v. The matter remained unresolved.

#### **Recommendations of the Committee**

80. The Committee recommends that
- i. within three months of the adoption of this report the Accounting Officer to provide a report on the corrective order issued to the Contractor regarding AC Type 1 used to the Auditor- General for verification.
  - ii. The Office of the Auditor General to confirm the status of the correction defects in the next audit period

#### **1.5 Machakos Region**

- i. Performance Based Contract for Maintenance of Machakos -Kangundo (B 105) Road.
81. The contract was awarded at a contract sum of Kshs.34,915,829 for a period of 24 months commencing on 27 July, 2021 with completion date of 26 July, 2023. The amount certified

was Kshs.15,257,277 as at the time of inspection in February, 2023. However, it was noted that the contractor had failed to meet the expected service levels as per the contract requirements. Both the inner and the outer vegetation had overgrown beyond the required service level between 150mm and 300mm respectively along the full road chainage.

82. The drainage channels were clogged by overgrown grass and silt. At Km 16, two guardrails that had been detached by a road accident had remained unrepaired and the contractor was not on site. In the circumstances, the project may not be executed as scheduled which will impact negatively on realization of value for money to the public.

#### **Submissions by the Accounting Officer**

83. The Accounting officer submitted that the non-compliances noted were attributed to Contractor's poor performance. He indicated that the Resident Engineer had invited the Contractor for a management meeting on 14th February 2023. A copy of minutes were provided for verification, which highlighted the poor performance and the need to rectify all the shortcomings.
84. He also submitted that the Contractor was on site and has since attended to all the issues raised under close supervision of the Resident Engineer's Team. copies of progress photos were provided for verification. Further the necessary penalties in terms of deduction would be effected when the Contractor submits his next IPC.

#### **Observations of the Committee**

85. The Committee observed that;

- i. The contractor has since attended to all the issues raised by the Auditor General under the supervision of the Resident Engineer's Team.
- ii. The matter is resolved.

#### **1.6 Eldoret Region**

i. **Stage Improvement of Nyaru-Iten**

86. Stage improvement of Nyaru-Iten works were awarded vide contract No. KeNHA/RD/M/2032/2016 at an original contract sum of Kshs.2,418,819,638.75 to commence on 14 November, 2016 for a period of 30 Months with completion date of 13 May, 2019. Later, the works were varied by Kshs.526,630,775.47 to Kshs.2,945,450,414.22 to be completed on 31 March, 2023. As at the time of verification in the month of February, 2023, the certified works were Kshs.2,417,805,863 or 78.5% versus 98.56% elapsed time.

87. The project has pending bills totalling to Ksh.525,893,208 as at 30 June, 2022 with a risk of incurring additional interest costs and penalties due to delayed payments. The Resident Engineer vide letter dated 10 June, 2022 recommended taking over of works as the contractor had substantially completed the works save for nominal non-permanent works. This would have avoided extension of time as the remaining works would have been done during the defect's liability period. However, instead the contractor was given an extension of time to complete the works by 31 March, 2023. Delay in paying interim payment certificates has led to excess costs to the project due to interests and taxes charged as shown below:

<b>Description</b>	<b>Kshs</b>
Variation of Price	203,577,680
Add 16% VAT	32,572,429
<b>Total</b>	<b>236,150,109</b>
<b>Interest on Delayed Payments</b>	<b>12,034,734</b>

88. The project brief as at 14 February, 2023 shows that the total certified works done inclusive of variation in price and value added tax was Kshs.2,417,805,863 (IPC 1-16). It also shows that interest on delayed payments at IPC 10 of Kshs.12,034,734. However, addition of interim payment certificates as given in the schedule excluding IPC 1 (Advance Payment) and IPC 10 (Interest on delayed payments) shows that the total certified works is Kshs.2,458,504,065 (83.5%) a difference of Kshs.40,698,202. The workings are shown in the below:

IPC No.	IPC Amount (Kshs)
IPC 2	119,949,434.21
IPC 3	120,920,581.41
IPC 4	125,539,428.65
IPC 5	121,771,792.76
IPC 6	121,312,703.88
IPC 7	242,265,757.40
IPC 8	266,581,167.84
IPC 9	173,548,004.26
IPC 11	192,805,947.52
IPC 12	252,221,796.52
IPC 13	160,762,791.08
IPC 14	205,361,507.00
IPC 15	159,462,884.64
IPC 16	196,000,267.97
<b>Total</b>	<b>2,458,504,065.14</b>
Certified Works	2,417,805,863.00
Difference	40,698,202.14

### **Submissions by the Accounting Officer**

89. The Accounting officer submitted that the Stage Improvement of Nyaru – Iten was not a Fuel Levy Maintenance Fund funded project but funded by the Exchequer and therefore should ideally not have appeared in Financial Statements for the Fund.
90. However, the Resident Engineer requested the Engineer vide letter Ref. KeNHA/06. A/R3/C53/2032/158 dated 10th June 2022 to constitute an inspection and acceptance committee to inspect the works with the purpose of taking them over. It was however not possible to form a committee to take over the works because there were still some outstanding works as communicated by the RE on 23rd June, 2022.
91. The contractor submitted an EoT request which was currently under review at the time of audit. They acknowledged that there was an error of oversight while preparing the project brief as at 14th February, 2023 where the total value of certified works was left understated as KES 2,417,805,863.40. He also noted that it had since been corrected and the correct value of total certified works was KES 2,458,504,065.14.
92. The Accounting Officer also submitted that the project had pending bills amounting to Kshs 525,893,208 as at 30 June 2022. This situation was because of the following:
- a) Inadequate Exchequer budgetary provisions in the current as well as prior financial years of project implementation.
  - b) Delayed receipt of Budgeted Exchequer funds by the Authority in the current as well as prior financial years.
93. He further indicated that in order to ensure that the pending bills were settled, the Authority, in liaison with the parent ministry and the National Treasury would endeavor to allocate sufficient budgets in subsequent financial years.

### **Observations of the Committee**

- (i) The Committee observed that the project was funded by the National Government development budget not by the Road Maintenance Levy Fund. It was erroneously captured in the Financial Statements; and
- (ii) The matter is unresolved

### **Recommendations of the Committee**

94. The Committee recommends that;
- within three months of the adoption of this report, the Accounting Officer to pass a journal entry and make an adjustment in the financial statements to correct the error and submit them to the auditor General for audit verification
- ii. Performance Based contract for the Maintenance of JN A8 Eldoret-Kapsabet Contract Sum Kshs.337,252,990.41
95. Review of documents provided for audit revealed that under summary of the bill of quantities, bill No.1, item 01-08-026A for payment of residential engineer's miscellaneous account reflected an amount of Kshs.1,922,337.50 which differed with the detailed analysis amount of Kshs.1,057,507.50 resulting to an unexplained variance of Kshs.864,830.

Similarly, bill No. 25, item no.25-56-003 for cross cutting issues reflected Kshs.3,513,001 and the attached appendix indicated an amount of Kshs.2,953,000 resulting to a variance of Kshs.560,001.

96. Physical verification carried out in February 2023 revealed a vandalized signposts at Km 24+200, Km 26+200, Km 27+300 and Km 32, vandalized culvert and drainage works, waste along the drainages and at Km 25 and Km 35+10 the drainage was broken and not properly aligned, the guardrail at Km 31+200 is broken and the shoulders had been swept away at Km 21+300, Km 28 and Km 30-35+10.

#### **Submissions by the Accounting Officer**

97. The Accounting Officer submitted that items 01-80-026A and 25-56-003 in the Bill of Quantities were appraised to cater for critical work items under the contract. He also submitted that vandalism of road furniture and dumping of waste onto the drains had been a challenge along the Eldoret-Kapsabet road. He noted that the regional office planned to carry out sensitization forums at market centers along this road aimed at winning support among residents against this vice.
98. He further submitted that the shoulder reinstatement to bituminous standards was done under this contract between Km 10+100 – 18+600 & Km 25+900 – 27+340. He added that they were packaging comprehensive shoulder reinstatement works in the next contract to be procured in FY 2023/2024.

#### **Observations of the Committee**

99. The Committee observed that;
- i. The matter of the variances of Kshs. 864,830 and Kshs. 560,001, in the summaries of bills of quantities was reconciled and therefore resolved.
  - ii. The matter of vandalism and waste dumping was not resolved.
  - iii. The management response did not correspond with the Auditor General's observation on the issue of shoulder reinstatement.

#### **Recommendations of the Committee**

100. The Committee recommends that;
- i. within three months of the adoption of this report the Accounting Officer to provide a report and supporting documents for the shoulder reinstatement project for both Km 21+300, Km 28 and Km 30-35+1 and Km 10+100 – 18+600 & Km 25+900 – 27+340 to the Auditor General for audit verification.
  - ii. The Accounting Officer to consider constructing guard rails with concrete and not metal bars to mitigate the issue of vandalism.

#### **1.7 Kakamega Region**

- i. Performance Based contract for the Maintenance of Busia-Malaba (B13) Road Contract Sum Kshs.270,869,947.80
101. Verification of the project revealed the following:
- a. Side drains were filled with waste and sewer at 0+000 to 0+200BS,
  - b. Emerging pothole and surface wearing off at Km 9+500 and Km 23+600,

- c. Delay in commencement of works for surface dressing chippings yet the expected progress as per POW was 62.5%
- d. Instruction 009 for installation of bumps and installation of rumble strips recorded progress of work 100% and expected progress as per POW was 100% however, no rumble strips had been installed as at the time of audit.

102. Further, the summary of bill of quantities, bill No.1 for the item 01-50-020 for purchase of office equipment at a total cost of Kshs.1,500,000 was not supported by a detailed appendix. Consequently, it was not possible to confirm which office equipment were to be purchased for this project.

103. In addition, under residents' engineer's office miscellaneous expenses, the following items were purchased and paid vide invoice order No.15 dated 15 February, 2022,;

Description	Quantity	Rate (Kshs)	Amount Kshs.
4 standard Laptops of minimum RAM 8GB and 1 TB ROM. core i7 preferably HP make or LENOVO	2	70,000	140,000
4 HP desktop computers of minimum RAM 8GB and 1tb ROM core i7	5	100,000	500,000
<b>Total</b>			<b>640,000</b>

104. Although the BoQ indicated 4 HP desktop computers, actual number purchased were 5 as highlighted above. No explanation was provided for this variation. Further, these assets were not captured in the fixed asset register.

**Submissions by the Accounting Officer**

105. The Accounting officer submitted as follows :

- (i) The side drains were filled with waste and sewer at 0+000 to 0+200BS,
- (ii) There were emerging pothole and surface wearing off at Km 9+500 and Km 23+600,
- (iii) There was delay in commencement of works for surface dressing chippings yet the expected progress as per POW was 62.5%
- (iv) Instruction 009 for installation of bumps and installation of rumble strips recorded progress of work at 100%.

106. He also submitted that::

- (i) The Region is in consultation with the relevant authorities in Busia County Government to address the challenge of discharge of sewage into the open drains by the locals at km 0+000 to 0+200 LHS. The blocked side drains were however noted during the monthly formal inspection No. 12 of January 2023 and communicated to the contractor vide letter Ref: KeNHA/R2/06.A/B13/3425/VOL.1/061 dated 6th February, 2023. Payment reductions have been made for the non-complying side drains section pursuant to Clause 2.6.1 of the Performance specifications.

- (v) The emerging potholes at km9+500 were noted during the monthly formal inspection No. 12 of January 2023 and communicated to the Contractor vide letter Ref: KeNHA/R2/06.A/B13/3425/VOL.1/061 dated 6th February, 2023. Payment reductions have since been made for the non-complying section pursuant to Clause 2.6.1 of the Performance specifications. A copy of the minutes of the Formal inspection and correspondences are attached
- (vi) Bill No. 1 item 01-50-020 (purchase of office equipment) is a PC sum. Usually for PC sums, prior approval to expend the Bill item is usually sought from the Engineer with the details of what is to be purchased well described. As at the time of audit the amount had not been expended hence no detailed appendix could be availed to the auditors.

107. He further submitted that there was a typo error in Appendix B, item No. 10. where what was in the description column was contradicting what was in the quantity column. He explained that the description column quoted 4 items to be purchased while the quantity column quoted 5 items. The purchase was done based on the quantity specified in the BQ and not the description as clearly highlighted in the RE's Site Instruction No. 4.

#### **Observations of the Committee**

108. The Committee observed that;

- i. The contractor was not fully executing the works by not removing litter, not diverting sewer in drainage channels, not patching emerging potholes on the road and the works for surface dressing chippings had not commenced.
- ii. The Bill of Quantities details of office equipment to be acquired have since been provided.
- iii. The contractor has since resolved the issues mentioned on the road drainage.
- iv. No evidence of consultation with the relevant authorities or stakeholders to address the challenge of discharge of sewage into the open drains by the locals had been provided.
- v. The matter remained unresolved.

#### **Recommendations of the Committee**

109. The Committee recommends that:

- i. **Within six months of the adoption of this report the Authority to the commence repairs of the broken sewer lines from the payment reduction for the non-complying side drains.**
- ii. **The Accounting Officer to ensure that all contracts entered into by the Authority are lawful and complied with in compliance with section 68(2)d of the PFM Act.**

#### **ii. Delayed Works and Roads with Excess Length**

110. A review of project status for contracts totaling to Kshs.14,452,666,851.45 with a length of 4,344.99 km revealed that 2,733.02 km had been done while 1,612 have delayed. Further, fifteen (15) roads with contracts totaling to Kshs.7,200,037,190 did more kilometers compared to what had been authorized in the procurement documents by 362.14 kilometers. No explanation or approval have been provided on the excess kilometers.

111. In the circumstances, delayed works impact negatively on the delivery of road infrastructure and excess and unbudgeted road works may result to unapproved road expenditure.

**Submissions by the Accounting Officer**

112. The Accounting Officer submitted that the management was analyzing the schedule provided by the auditors to facilitate preparation of detailed responses and copies of appropriate documents for review with the auditors.

**Observations of the Committee**

113. The Committee observed that;

- i. No approval or documentation was provided for the excess kilometers of 362.14 kilometers
- ii. No explanation was provided for the delay on construction of 1,612 km
- iii. The matter remained unresolved.

**Recommendations of the Committee**

114. The Committee recommends that:

- i. Within three months of the adoption of this report, the Accounting Officer to submit supporting information the delayed 1,612 km and the fifteen roads with excess length to the Auditor General for audit verification.
- ii. The Accounting Officer to ensure timely submission of accounting documentation required for audit verification during the audit as per the provisions of Section 31(4) of the Public Audit Act, 2015.

MIN. NA/AA&GPC-SFAC/2024/019: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at 4.24 p.m. The next meeting will be held on Saturday 24<sup>th</sup> February 2024 at 9.30 am.

SIGNED..........DATE..17/08/2024.....

HON. FATUMA ZAINAB MOHAMMED, MP

(CHAIRPERSON)

SPECIAL FUNDS ACCOUNTS COMMITTEE

**MINUTES OF THE 7<sup>TH</sup> SITTING OF SPECIAL FUND ACCOUNTS COMMITTEE  
HELD ON SARTADAY, 24<sup>TH</sup> FEBRUARY 2024, IN GARDEN SUITE CONFERENCE ON  
ON 6<sup>TH</sup> FLOOR, HILTON GARDEN HOTEL AT 9.30AM.**

---

**PRESENT**

1. Hon. Fatuma Zainab Mohammed, MP - Chairperson
2. Hon. Erastus Kivasu Nzioka, MP
3. Hon. Charles Ngusya Nguna, MP
4. Hon. Eve Akinyi Obara, MP
5. Hon. Tom Mboya Odege, MP
6. Hon. Catherine Nakhabi Omanyoo, MP
7. Hon. Cecilia Asinyen Ngigit, MP
8. Hon. Joseph Kimutai Chererot, MP
9. Hon. Paul Kibichi Biego, MP

**APOLOGIES**

1. Hon. Dawood Abdul Rahim, HSC, MP - Vice Chairperson
2. Hon. Faith Wairimu Gitau, MP
3. Hon. Joseph Majimbo Kalasinga, MP
4. Hon. Dr. Christine Ombaka Oduor, MP
5. Hon. Joshua Odongo Oron, MP
6. Hon. Kahugu Erick Mwangi, MP

**OFFICE OF THE AUDITOR-GENERAL**

1. Mr. David Osiemo - liaison Officer.
2. Mr. Simon Kiiriba - National treasury

**NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Erick Nyambati - Clerk Assistant I
2. Ms. Comfort Achieng - Clerk Assistant III
3. Mr. Nimrod Mate - Clerk Assistant III
4. Mr. Robert Ngetich - Fiscal Analyst II
5. Ms. Judith Kanyoko - Legal Counsel II
6. Mr. Derrick Kathurima - Media Relations Officer
7. Ms. Pauline Sifuma - Hansard Reporter II
8. Mr. Benard Omondi - Sergeant-at-arms
9. Mr. Abdifatah Mahat - Attachee

**MIN. NA/AA&GPC-SFAC/2024/020:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10.12 am, followed by a word of prayer and introductions. The following agenda was adopted as circulated:

1. Prayers
2. Preliminaries/Introductions
3. Report Writing on Consideration of the Auditor General Reports on Accounts of the Road Maintenance Levy Fund Kenya Rural Roads Authority for the Financial Years 2020/2021 and 2021/2022.
4. Any Other Business
5. Adjournment Date of the next meeting.

MIN. NA/AA&GPC-SFAC/2024/021: REPORT WRITING ON CONSIDERATION OF THE AUDITOR GENERAL REPORTS ON ACCOUNTS OF THE ROAD MAINTENANCE LEVY FUND (KENYA RURAL ROADS AUTHORITY) FOR THE FINANCIAL YEARS 2020/2021 AND 2021/2022.

**EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE ROAD LEVY FUND (KENYA RURAL ROADS AUTHORITY) FOR THE FINANCIAL YEAR 2020/2021 AND 2021/2022**

1. Eng. Philemon Kandie, MBS, the Director General, Kenya Rural Roads Authority (KERRA) appeared before the Committee on Thursday 12<sup>th</sup> October 2023 to adduce evidence on the audited financial statements for the Road Levy Fund for the Financial Years 2020/2021 and 2021/2022. The minutes of the Committee sitting, and submissions tabled by the Accounting Officer are annexed to this report. He was accompanied by:

Ms. Catherine Butaki - Deputy Director Communication  
 CPA Judith C Chumo - Deputy Director Audit Services  
 CPA William Abungu - Principal Accountant  
 CPA Matilda - Deputy Director Finance  
 .Eng. Peter Gichohi - KERRA Director MTCE

**3.1 Examination of the report of the Auditor-General for the Financial Year 2020/2021  
 Unsupported Cash and Cash Equivalents**

2. The Statement of financial position reflects cash and cash equivalent balance of KSHS.20,827,705,000 as disclosed in Note 7 to the financial statements. The balance of negative cash balance of ksh 26,035,445 in the Road Maintenance Levy Fund (RMLF) Operations Headquarters account which has been offset contrary to paragraph 48 of International Public Sector Accounting Standard (IPSAS) 1 that prohibits offsetting of assets and liabilities and revenue and expenses unless required or permitted by IPSAS.

**Submissions by the Accounting Officer**

3. The Accounting officer submitted that the negative balance was a cashbook balance, which was rectified in the subsequent month of July 2021. The bank statement as at 30th June 2021 was positive Kshs. 25,231,707.53.

#### Observations of the Committee

4. The Committee observed that:
  - i. The negative balance was a cashbook balance which was rectified in the subsequent month of July 2021;
  - ii. The management has since provided the reconciliation that corrected the anomaly for verification; and
  - iii. The matter is resolved.

#### Recommendations of the Committee

5. The Committee recommends that the Accounting Officer to ensure that all applicable accounting and financial controls, systems, standards, laws, and procedures are followed in the preparation of the financial statements in compliance with Public Finance Management Act, 2012 and in accordance with the standards prescribed by the Public Sector Accounting Standards Board as per Regulation 101(4) of the Public Finance Management (National Government) Regulations, 2012.

#### 3.2 Examination of the report of the Auditor-General for the Financial Year 2021/2022

##### a. Inadequate Details in the Ledgers

6. The Statement of financial performance and Note 4 to the financial Statements reflects Ksh 23,295,330,000 in respect of road works expenditure. Included in this amount is 10% Road Maintenance Levy Fund (RMLF) critical link roads expenditure of Ksh 3,994,932,000. However, the General Ledger provided for audit review, revealed that payments totaling to Ksh 533,300,491 under various codes had no system description of payee. Similarly, the road works expenditure of Ksh 23,295,330,000 includes Ksh 7,950,000,00 being 22% RMLF constituency Roads funds. The latter balance includes various payments totaling to Ksh 951,756,566 which had no system description showing details of payments.
7. In the circumstances, the accuracy and completeness of payments totaling to Ksh 1,485,057,057 could not be confirmed.

#### Submissions by the Accounting Officer

8. The Accounting officer submitted that the system description of payee and details of payments in the various ledgers has since been reviewed and provided for verification.

#### Observations of the Committee

9. The Committee observed that:
  - i. The general ledger provided for audit review revealed that payments under various codes had no system description of payee and details of payments.
  - ii. The delay in the submission of payee and details of payments in the various ledgers was occasioned by the transition to the ERP system; and
  - iii. The matter remained unresolved.

Annexure Scheduled Business

**SPECIAL FUNDS ACCOUNTS COMMITTEE SCHEDULE OF MEETINGS FOR THE THIRD SESSION MARCH – APRIL 2024,**

	DATES	FUND	FINANCIAL YEARS	AGENDA
1.	Thursday 22 <sup>ND</sup> February 2024-  Sunday 25 <sup>th</sup> February 2024	REPORT WRITING RETREAT (Consideration of the KURA, KENHA, KWS & KERRA reports)		
2.	Wednesday 28 <sup>th</sup> February 2024 Time 9.30 am	Veterinary service Development Fund	2020/21 2021/22	Meeting with the Principal Secretary State Department Livestock to examine reports of the Auditor General
3.	Thursday 29 <sup>th</sup> February 2024 Time: 9.30am	National Humanitarian Fund	2020/21 2021/22	Meeting with the Principal Secretary state department State Department for Internal Security and National Administration to examine reports of the Auditor General
4.	Tuesday 5 <sup>th</sup> March 2024 Time: 9.30am	Sports Arts and Social Development Fund	2021/22	Meeting with the CEO of Sports Arts and Social Development Fund to examine reports of the Auditor General
5.	Tuesday 7 <sup>th</sup> March 2024 Time: 9.30am	IN HOUSE MEETING		Confirmation of Minutes

6.	WORKING RETREAT TO EXAMINE JUDICIARY MORTGAGE SCHEME FUND 2012-2017 AND 2022 AND KUCCPS MORTGAGE SCHEME FUND 2020/2021 AND 2021/2022  FRIDAY/ SARTADAY 8 <sup>th</sup> and 9 <sup>th</sup> March 2024 KIAMBU/MACHAKOS			
7.	Tuesday 12 <sup>th</sup> March 2024 Time: 9.30am	Government Press Fund	2020/21 2021/22	Meeting with the Government Printer to examine reports of the Auditor General
8.	Thursday 14 <sup>th</sup> March 2024 Time 9.30 am	Jubilee Party	2017/18 2018/19 2019/20 2020/21 2021/22	Meeting with the CEO to examine reports of the Auditor General
9.	Tuesday 19 <sup>th</sup> March 2024 Time 9.30 am	Inhouse		Confirmation of Minutes and pending Business
10.	a) Collaborative working retreat with Salaries Remuneration Commission, IPSAS board and OFFICE OF THE AUDITOR GENERAL to apprise the committee on matters Mortgage and Car loan scheme fund. b) Inspection Visit of the Road Maintenance levy fund Reports and the Utalii College in Kilifi for Tourism promotion fund c) Meeting with the Director General to examine reports of the Auditor General for Communication of Kenya/Universal service Fund MOMBASA REPORT WRITING RETREAT TO CONSIDER REPORTS Short Recess: Friday, 22nd March – Monday, 8th April 2024			

MIN. NA/AA&GPC-SFAC/2024/026: ADJOURNMENT/DATE OF NEXT MEETING  
There being no other business, the meeting was adjourned at 4.14 p.m. The next meeting will be held on Wednesday 28<sup>th</sup> February 2024 at 9.30am.

SIGNED.....*Fatima*.....DATE..17/08/2024.....

HON. FATUMA ZAINAB MOHAMMED, MP

(CHAIRPERSON)

SPECIAL FUNDS ACCOUNTS COMMITTEE