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Performance Audit Report of the Auditor-General

Administration of Civil Servants Group Accident Claims, Estates and Trusts by the Public Trustee



Office of the Attorney General and Department of Justice

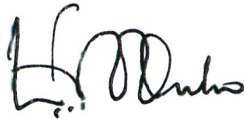
December 2014

Foreword by the Auditor-General

I am pleased to publish and publicize this audit report that examines the administration civil servants group accidents claims, deceased's estates and trusts by the department of the Administrator General under the Office of the Attorney General. My Office carried out the audit under the mandate conferred to me by the Public Audit Act, 2003. Section 29(1) of the Act mandates me to assess the economy, efficiency and effectiveness with which the Government, a state corporation or local authority uses its resources.

Performance audits together with financial and continuous audits form the three-pillar audit assurance framework that I have established to give focus to the varied and wide scope of audit work done by my Office. The framework provides high-level of assurance to stakeholders that public resources are not only disbursed, recorded and accounted for in the correct manner, but also that their use results in beneficial change in the lives of Kenyans. The main goal of our performance audits is to promote effective use of public resources and delivery to Kenyans of public services of outstanding quality.

I have submitted the original copy of the report to the Speaker of the National Assembly to table in Parliament in accordance with Article 229(7) of the Constitution. In addition, I have remitted copies of the report to the Administrator General at the Office of the Attorney General and the Principal Secretary at the National Treasury.



EDWARD R.O. OUKO, CBS

AUDITOR-GENERAL

31 December 2014

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List of Abbreviations

AG	Attorney General
BPMS	Business Processing Management System
CL	Civil Litigation
CPSC	Chief Principal State Counsel
CSGA	Civil Servants Gratuity Accident claim
DC	District Commissioners
DCC	Deputy County Commissioners
DCLC	Deputy Chief Litigation Counsel
ICT	Infrastructure, Communication and Technology
PT	Public Trustee
OAG-K	Office of the Auditor General Kenya
SLO	State Law Office

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Executive Summary

Background to the Audit

1. This report examines the administration civil servants group accidents claims, deceased's estates and trusts by the department of the Administrator General under the Office of the Attorney General. The Public Trustee (PT) office incorporated on 29 May 1925 under an Act of Parliament. The Public Trustee office is a corporation sole under the Public Trustee Act, Chapter 168 of the Laws of Kenya and operates within the organisational framework of the Administrator General in the Office of the Attorney General. The Attorney General provides legal services to the Government, as mandated by Section 26 of Kenya's Constitution, and appoints the Administrator General and his/her Deputy and Assistant Administrator Generals. There is one Administrator General at the Head Office deputized by Senior Deputy Administrator Generals in twelve regional offices. The PT's office has existed in Kenya since the early days of the colonial administration. The Public Trustee is mandated to administer civil servants group accidents claims, estates and trusts, issue estate duty and compliance certificates, act as a trustee in WAKF commission, administer and be custodian of enemy property and manage trusts accepted under the Public Trustee Act, Chapter 168 of the Laws of Kenya.
2. Notwithstanding the enactment of the 1981 Law of Succession, Chapter 160 of the Laws of Kenya, incidents of grabbing or intermeddling with assets of deceased persons under the pretext of customary laws was rampant in Kenya. The Public Trustee's offices were therefore decentralized in 1987 to curb this vice, so that proper services relating to administration of estates could be brought closer to the Kenyan people. The Public Trustee was converted into a department under the Office of the Attorney General in 1991. By 2014, the Public Trustee had fourteen established stations in Kisumu, Mombasa, Malindi, Lamu, Nyeri, Machakos, Embu, Garissa, Meru, Nakuru, Eldoret, Kisii, Kakamega and Nairobi.

Objective of the Audit

3. The audit aimed at establishing whether the Public Trustee has put in place adequate systems for effective administration of civil servants group accident claims, deceased persons estates, and trusts.

Scope of the Audit

4. The audit focused on administration of civil servants group accident claims, deceased estates, trusts by the Public Trustee from July 2008 to December 2013. The audit sampled eight of the Public Trustee's stations namely; Nairobi, Kisumu, Kakamega, Mombasa, Machakos, Nakuru, Nyeri and Malindi which had been in existence for longer periods of time.

Summary of our findings

5. The audit found that there are several advantages of appointing the Public Trustee to execute one's will or administer a deceased's estate. The advantages include guaranteed continuity of office since the Public Trustee's office has perpetual succession, fees charged are fair and regulated by statute thus not subject to rapid change, the Public Trustee does not have to give a surety bond for double the gross value of the estate to the High Court of Kenya as required in the case of an individual applicant or administrator and the Public Trustee services are indemnified by the Government against loss, waste or damage. While the office of the Public Trustee had reviewed its processes and procedures and related supporting laws to improve efficiency of its operations by 2013, the audit reviewed the Public Trustee's operational activities and found that the systems put in place can be improved for more adequate delivery of services to the public. The audit found that the Public Trustee's systems did not ensure effective achievement of set plans, accurate accounting and reporting of activities and service delivery.

Public Trustee's systems did not ensure effective achievement of set plans

6. Public funds have to be spent in order to achieve the objectives and purpose for establishment. The Public Trustee has however recognized the challenges it faces and attempted to address them through the Attorney General's 2008 – 2013 strategic plans by decentralizing, providing services online, creating public education and awareness of services offered, automating Public Trustee services and enhancing inter-agency collaborations by 2012. However, the Public Trustee's voted provisions' operations, budget and resource allocation were not directed at achieving set strategic objectives. Thus:

- a) *The Public Trustee's Business Process Management System (BPMS) was not working as intended.*

In 2007, the Attorney General's office, procured the services of Eurocomms Consultants Ltd at Kshs 8,500,000.00 to install a Business Process Management System (BPMS) for the Public Trustee. The overall objective of procuring the BPMS was to automate all Public Trustee services with a secure and reliable application that will integrate all the documents submitted by any estate with all payments and receipts in addition to linking the Public Trustee's headquarters in Nairobi with all its regional offices country wide. Procurement of the BPMS was not handled with prudence and regularity, thus, a waste of public funds as more cost was incurred in trying to correct mistakes and unacceptable services in the design because the BPMS not delivered as required. The BPMS was installed by February 2009 and commissioned by the Attorney General, a year later, in February 2010. Four years later, as at February 2014, the BPMS had still not been used as intended, therefore added minimal value or had minimal improvement in Public Trustee service delivery as contracted.

b) *The Public Trustee's Legal Services were not improved.*

The Public Trustee's services were not being offered online neither were they decentralized as planned. By March 2014, the Public Trustee had established offices in only fourteen of Kenya's forty seven counties. This meant that Kenyans were travelling unreasonable long distances to access Public Trustee services and Public Trustee offices had to serve populations of up to over ten thousand each. In 2012 parliament allocated the Office of the Attorney General Kshs.10,000,000.00 for infrastructure and civil works in Public Trustee field offices, however, funds allocated were spent in activities that were not factored in the Office of the Attorney General's year 2011/12 and 2012/13 annual procurement plans.

c) *Activities planned to conduct public educational and awareness activities were not effectively carried out.*

This led to brokers/middlemen taking advantage and extorting large sums of money from beneficiaries in the pretense of helping them fill the Public Trustee forms and legal documents at a fee with the hope of getting their funds faster. Lack of awareness of Public Trustee services inhibited the public from utilizing Public Trustee's custodian trustee services at no fee which exposed public institutions to the risk of loss, fire and destruction of important title documents. The public were also oblivious of the benefits of writing and keeping in safe custody wills and title documents with the Public Trustee at no charge.

d) *The Public Trustee operations were still entirely manual.*

By March 2014 the Public Trustee had not yet automated its operations as had been planned - by 2010, and all its operations were still entirely manual which slowed down service delivery. The Public Trustee's inter-agency collaboration and public awareness activities were also not well managed as planned. In addition, the Public Trustee guidelines, manuals, workshops and scheduled consultations were not done as at March 2014 as funds were not allocated for these activities. As a result, brokers and middlemen were fleecing vulnerable Public Trustee clients funds in the hope of assisting them get their funds administered faster.

e) *Staff insufficiencies not resolved as planned.*

The Public Trustee's services are of a specialized nature as they involve collection, management and subsequent distribution of both movable and unmovable property under either estate or trust. In fiscal 2012/13, the Office of the Attorney General budgeted funds to give capacity and establish the Public Trustee with up to 441 staff, yet there were only 218 staff (51%), which is half of the expected staff capacity levels. Further, most of the Public Trustees offices did not have sufficient trained staff, thus, current staff were being overworked coupled with long outstanding work backlog and resultant overtime payments. These overtime payments at times amounted to 66% of the total basic salaries for the Public Trustee's regional offices, hence, not proper use of public funds.

The Public Trustee's systems were not adequate for reliable accounting and reporting of its activities

7. The Administrator General maintains four Public Trustee accounts:
- Administration Accounts, which accounts for funds for estates being administered
 - Investments Accounts for beneficiary funds not immediately required that have been invested,
 - Sundry Estates Account for funds used for the day to day operations of the office; and
 - Trust Estates Account for trust funds being held.

Annually the Administrator General submits financial statements for these four accounts to the Auditor General for audit, and have in the past years be issued with qualified opinions. Public Trustee systems were not adequate for reliable accounting and reporting of Public Trustee activities thus Public Trustee did not always generate accurate financial statements, there were overdrawn estate accounts and returns on beneficiary funds invested were not consistent with returns received

- a) *The Public Trustee's financial statements had no provision for doubtful investments and bank deposits.*

The Public Trustee's services are indemnified by the Government against loss, waste or damage. However, the Public Trustee should still maintain a fiduciary responsibility and stewardship role to ensure that the office prevents, reduces and counteracts problems as they emerge. The audit found that due diligence had not been undertaken by those charged with a fiduciary responsibility for almost ten years to ensure deposits and investments were held with reputable financial institutions. This emerged on the realization that there were no provisions to mitigate losses of doubtful deposits that may now not be recoverable totaling Kshs 500 million. These amounts were held in three defunct financial institutions; Consolidated Bank of Kenya Ltd, Trust Bank Ltd and City Finance Bank Ltd.

- b) *The Public Trustee's financial statements included significant errors and omissions.*

The Auditor- General's report for the financial year 2011/2012 financial statements of the Public Trustee included millions of significant errors and omissions which does not show goodwill in the fiduciary responsibility and stewardship in managing public funds.

- c) *The Public Trustee had overdrawn estates.*

The audited Public Trustee financial statements have over the years reflected overdrawn estate payments to beneficiaries running up to Kshs 5,027,708.00. Interviews conducted attributed the overpayments to interest rates due from the headquarters, poor record keeping, inadequate authorization payment controls, low staffing levels and delays in updating ledger balances regularly. The Public Trustee recovered the amounts overdrawn directly from the staff over the years and has greatly reduced the vice to Kshs.6,170.00 by the year 2012/2013.

- d) *Returns recieved on beneficiary funds invested were not consistent with what was paid out.*

The Public Trustee Act, Chapter 168 provides for the Public Trustee to invest estate and trust funds not immediately required for the purposes of administration in authorized investments. Funds available are pooled together and may be invested in medium or long-term investments. Analysis of the Public Trustee Consolidated Accounts from 2007 to 2013 indicated that the Public Trustee received between Kshs 121,313,230.00 to Kshs 472,793,960.00 on investments made on beneficiaries funds in its possession. However, what was eventually paid to the beneficiaries' estates was not consistent with returns received and ranged, between Kshs 163,671,237.00 and Kshs 679,928,399.00

PT service delivery to the public was not yet efficient

8. The Public Trustee's systems for service delivery are not yet efficient enough, since:

- a) *Not all Public Trustee clients were satisfied with services offered.*

The audit team administered audit questionnaires to establish the extent to which services offered by the Public Trustee met the expectations of their clients. Forty-nine clients who had sought Public Trustee services during the time of the audit were questioned in Public Trustee's seven regional offices visited. About 83% of the forty-nine respondents felt that Public Trustee staffs were willing and ready to help customers in providing prompt and timely services. About 77% of the respondents expressed dissatisfaction with the time taken to complete administration of estates. For example, some respondent expressed they had waited for over 10 years yet their files were still pending completion, and this caused them financial distress. About 41% of the respondents felt administration took long than required. Finally, about 49% of the respondent said they would recommend the services of the Public Trustee to colleagues, family and friends.

- b) *The Public Trustee's operational response is not yet satisfactory for efficient service delivery.*

Information received by the Public Trustee was not always used effectively to respond to the changes needed or recommendations made. Issues raised were taking years to be resolved or remaining unresolved since no effective follow-ups or monitoring was being done.

- c) *The Public Trustee is holding huge amounts of beneficiary funds.*

Beneficiary funds held by the Public Trustee steadily rose from Kshs 3,770,820,352.00 in 2007 to Kshs 6,785,626,141.00 by 2013. The increase in funds was steady in all Public Trustee offices and can be attributed to increased delays in administration of estates, increased values of death gratuities and group accident claims, new clients being received, wrangles among heirs, unclaimed estates among other issues. Over the years, the Public Trustee has made efforts to request heirs of deceased persons, through the local newspapers, to come forth and contact the Public Trustee offices to process

payments due to them. However, the appeals gave rise to fraudsters trying to take advantage of the unclaimed estates thereby frustrating the Public Trustee's efforts of releasing funds held.

d) *Payment of advances and school fees by the Public Trustee.*

The Public Trustee Act, legislation No.23, allows the Public Trustee to make advances for the purpose of any estate under its administration out of any credit cash outstanding balance of the estate being administered. Analysis of the Public Trustee's files indicated that beneficiary advances and fees were often paid within the 7 days stipulated in the Public Trustee's service charter time since by then the heirs had already submitted most of the required legal documents. However, Public Trustee offices in Kisumu and Kakamega often took 14 days to pay advances and school fees. The delays were attributed to lack of Accountants to sign cheques, delay in advertising estates in the Kenya Gazette, the beneficiaries not availing fees structure or had petitioned for grants of letters of administration.

e) *There was delay in discharging Civil Servant Group Accident Claim.*

Where a civil servant or army personnel dies as a result of an accident, compensation through insurance under group accident policy is paid to their dependents. The Public Trustee receives the claims from the National Treasury and is expected to remit the funds to the deceased dependents within thirty days at no charge upon receipt of requisite legal documents.

The audit reviewed the Civil Servant Group Accident funds received by the Public Trustees between 2008 and 2012, and found that 75% were paid within the stipulated time frame of 30 days. The remaining 25% took an average of 163 days to 841 days to be discharged. The delay was due to delayed response to the Public Trustee's enquiries by deceased employers, district commissioners and beneficiaries not cooperating with each other and giving wrong information about the heirs.

f) *There was delay in administering estates.*

According to Public Trustee's service charter, summary discharge of estates valued below Kshs.500,000.00 should be completed within 7 days upon submission of the above required documents and cooperation by the customers. The audit found that the most common cause for the delays was in drawing up final accounts and this happens despite summary certificates of discharge having been granted by the Administrator General. At times, it was taking long for the staff to write letters corresponding the same to the heirs and finalize the administration.

According to the Public Trustee's service charter, administration of estates valued above Kshs 500,000.00 should be distributed within 90 days upon submission of the required documents. The audit analyzed Public Trustee estate files between 2008 and December 2013 to measure the extent of delay in administration of estates. At the Public Trustee's headquarters, only 12 of the 47 estates (25%), sampled had been fully distributed by the Public Trustee since 2008. There was also delay in administration in sampled regional

offices for up to ten years. On average the Public Trustee regional offices took between nine months to five years to administer cases for amounts above Kshs 500, 000.00. Only 5% out of the 93 sampled estates above Kshs 500,000.00 in regional offices had the funds released for payment to the beneficiaries since 2008. 95% out of the 93 sampled estates for amounts above Kshs 500,000 were pending completion and release of funds to the beneficiaries. In some instances, beneficiaries had discharged and indemnified the Public Trustee however there was no formal communication to them again to pay and have the files closed.

g) *The Public Trustee faces property management challenges.*

In the course of the administration of estates of deceased persons or trusts, the Public Trustee is under statutory obligation to safeguard and maintain property left by the deceased or held in trust for the well being of the beneficiaries. All property management in the Public Trustee's regional offices is conducted in liaison with the property management at the head office. The Public Trustee manages the properties through its staff or through estate agents at a fee of 7.5% to 15% based on rent collected. However, at the time of the audit the Public Trustee did not have estate property valuation specialist or staff with property management skills, and therefore, had not been able to maintain properties managed to the standards expected due to low rates and inconsistency in the rent collection. The amount collected was often insufficient for maintenance of the properties and for advances to the beneficiaries.

h) *Inefficient handling of the Public Trustee information.*

The Public Trustee's conduct is based largely on perpetual written records which has to be well preserved and produced when required. The audit found that some Public Trustee's offices had inadequate security that risked the integrity of Public Trustee information. The Public Trustee also lacked adequate archive space in most of its offices. At times files and ledgers were not well kept to ensure the information is safe from the risk of fire, water and other elements. Poor information storage and record keeping practices increased PT's vulnerability to legal challenges and inefficiency in tackling issues as they arose.

9. The audit noted the commitment made by the Administrator General to improve deficiencies brought to their attention during the audit that is included in this report.

Conclusions

10. The Public Trustee's vision is to be the best trustee in Kenya through service excellence systems. To fulfill this vision the Public Trustee needs to enhance its systems for effective administration of Civil Servants Group Accident claims, deceased persons' estates and trusts as they are still not adequate enough. Strategic planning utilizes a lot of public resources and it's not therefore prudent to use public funds to produce strategic and operational plans without a plan of implementation and monitoring the progress of implementation.

The Public Trustee along with the Office of the Attorney General have recognized some of their challenges and strategized to overcome them in the Office of the Attorney General's

2008 – 2013 strategic plans. To establish credibility with its stakeholders, it is crucial that the Public Trustee's office demonstrate the ability to achieve intended results in the most prudent manner because we found that the Public Trustee's resources were not directed and controlled to ensure plans put in place were implemented, and this negatively hampered service delivery.

Recommendations

11. The Auditor-General has made several recommendations that the Administrator General could take to ensure that the Public Trustee puts in place adequate systems for administration of civil servants group accident claims, deceased estates and trusts. The recommendations call for appropriate remedial actions to restore the Public Trustee's Business Process Management System, more assertive actions at ensuring set strategic objectives aimed at improving efficiency in the Public Trustee's operations are conducted, and more oversight and supervision of the Public Trustee's accounting activities to avoid estate overpayments. The recommendations are detailed in Chapter 6 of this report.

DETAILED AUDIT REPORT

Chapter 1

Background to the Audit

Introduction

- 1.1 This report contains findings and other relevant details of a performance audit conducted by the Office of the Auditor-General on the administration of estates and trusts by the Department of the Administrator General under the Office of the Attorney General. The audit was conducted as provided for under Section 29 of the Public Audit Act, 2003 and the report prepared for presentation to Parliament under Article 229 (7) of the Constitution of Kenya.
- 1.2 The Public Trustee (PT) office is a corporation sole under the PT Act (Chapter 168 of the Laws of Kenya). The PT office operates within the organisational framework of the Administrator General in the Office of the Attorney General. The Office of the PT has existed in Kenya since 1925, the early days of the colonial administration. The office of the PT carries out the duties of administration of estates of deceased persons of all races and creed including foreigners, who die either intestate (without a will) or testate (having made a valid will) leaving their property in Kenya and Kenyans who die leaving the whole or part of their property outside Kenya. The PT also manages trusts on behalf of minor children, the mentally ill and also acts as a custodian trustee of some trusts. The PT clients are mainly widows, widowers, orphans, and the poor marginalized people in Kenya's society.

Motivation for the Audit

- 1.3 The Auditor General authorized the audit after having considered that efficiency in administration of Civil Servants Gratuity Accident claims and administration of deceased persons estates and trusts services is an important public service delivery for Kenyans. An efficient delivery of the Public Trustee services would thus reduce financial suffering of widows and orphans after the loss of their dependents. An audit would inform government and parliament, the challenges if any, faced by the Public Trustee and offer recommendations on corrective action to the Administrator General to use in decision making for improved service delivery.

Chapter 2

Design of the Audit

Objective of the Audit

- 2.01 The audit aimed at establishing whether the Public Trustee (PT) has put in place adequate systems for effective administration of Civil Servants Group Accident claims (CSGA), deceased persons' Estates and Trusts.

Scope of the Audit

- 2.02 The Administrator General discharges the duties of the Public Trustee. These duties include administration of Civil Servants Group Accident claims, deceased persons' Estates and Trusts accepted under the Trustee Act, Cap 168 of the Laws of Kenya. The PT has its headquarters in Nairobi with thirteen stations in Mombasa, Malindi, Machakos, Lamu, Kisumu, Kakamega, Eldoret, Nakuru, Embu, Kisii, Garissa, Meru, and Nyeri. The audit covered the period from July 2008 to December 2013 in eight of the PT's stations namely; Nairobi, Kisumu, Kakamega, Mombasa, Machakos, Nakuru, Nyeri and Malindi which had been established for longer periods of time.

Audit Criteria

- 2.03 The PT's performance was assessed against administration of CSGA, trusts and estates within the provisions of the PT Act, service charter and strategic objectives among other documents. The detailed assessment criteria applied in the audit are highlighted in the respective audit findings in chapter four of the report.

Audit Methodology

- 2.04 The audit was conducted in accordance with performance audit guidelines and International Standards for Supreme Audit Institutions (ISSAIs) set by International Auditing Standard of Supreme Audit Institutions (INTOSAI) and audit policies and procedures established by the Office of the Auditor General Kenya (OAG -K). The audit involved conducting interviews, administering questionnaires and documentary reviews of PT's operational activities. Data extraction, analysis, walkthrough tests of the critical applications and review of the audit trail on data entered in PT's BPMS was also done. PT offices that had been in operations for more years and were administering higher number of estates were selected for the audit to enable the team gather useful information over time.

Chapter 3

Description of the Audit Area

The Public Trustee's Institutional Framework

3.01 The Public Trustee (PT) was established on 29 May 1925 by an Act of Parliament (Chapter 168 of the Laws of Kenya) to provide services in the administration of deceased estates and trusts. The PT's office is a corporation sole with perpetual succession and an official seal. The PT operates within the organizational framework of the department of the Administrator General in the Office of the Attorney General. The Attorney General provides legal services to the Government, as mandated by section 26 of Kenya's Constitution, and appoints the Administrator General and his/her Deputy and Assistant Administrator Generals. There is one Administrator General (PT) at the Head Office deputized by Senior Deputy Administrator Generals. The PT's office is made up of various sections, comprising mainly of Lawyers, Accountants and Property Managers who are supported by secretaries, trust, and clerical officers.

Statutory Mandate, Vision and Mission of PT

3.02 The Public Trustee is mandated to administer estates and trusts, issue estate duty and compliance certificates, act as a trustee in WAKF commission, administer and be custodian of enemy property and manage trusts accepted under the Trustee Act Cap 168 of the Laws of Kenya. PT's mission is to "provide professional and efficient services in administration of trusts and estates through competent staff". PT's vision is "To be the best trustee and administrator of estates in Kenya through service excellence." PT's strategic objectives and their current status are reflected in chapter 4 of this report.

Public Trustee Roles and Responsibilities

3.03 The PT has its headquarters in Nairobi with thirteen stations in Mombasa, Malindi, Machakos, Lamu, Kisumu, Kakamega, Eldoret, Nakuru, Embu, Kisii, Garissa, Meru, and Nyeri. Each PT office (station) receive estates to be administered directly to them, operate and prepare their accounts independently and at the end of each financial year forward their accounts to the head office to be consolidated. All PT trusts and investments are operated at the headquarters. In districts where the PT has no office, the District County Commissioners are ex officio agents of the PT and can summarily deal with any estate whose gross value does not exceed Kshs 100,000.00. The PT discharges fiduciary duty and plays a stewardship role by collecting, managing and preserving movable and immovable property for the benefit of deceased beneficiaries.

Duties and functions of the Public Trustee office

3.04 The PT administers in line with the Law of Succession Act (Cap. 160) which applies to all persons, who leave property in Kenya regardless of their nationality including Kenyans dying and leaving their property anywhere in the world. The Law of Succession Act (Cap. 160), 1990 amendment excluded persons of the Muslim faith. The Chief Kadhi determines the mode of distribution of persons of the Muslim faith as outlined in the Holy Quran Chapter four. Services offered by the Public Trustee include administration of Civil Servants Group Accident Claim (CSGA), administration of estates and trusts and issuance of Estate Duty Certificates:

- I. **Administration of Civil Servants Group Accident Claim:** Where a civil servant or army personnel dies as a result of an accident, compensation through insurance under group accident policy is paid to their dependents. The National Treasury and Department of Defence appointed the PT to administer such proceeds through PT head office only. CSGA funds do not form part of the deceased's estate.
- II. **Administration of Estates:** Administration of an estate on death arises when a person dies and does not leave a will or some assets are not disposed of by their will or the will is invalid or incomplete in some way, then administrators must be appointed. An estate includes all immovable and movable properties of a deceased person including choices in action like court cases or claims. There are 35 PT forms regarding administering of estates. The details of the forms are in the PT's 1994 handbook. The PT administers deceased's estate either through Grant to Public Trustee, Grant to Public Trustee under certain circumstances and Administration of the deceased's estate without grants.
 - a) **Administration through a grant to Public Trustee:** Public Trustee makes enquiries into the estates of deceased persons when a report of action under the Laws of succession is made to the Office or where they have been informed of the death of any person in Kenya and have been requested to take action in respect of the deceased's estate by any person appearing to have a legitimate interest in the succession or administration of the estate. The PT then initiates administration by applying to the court for a grant of representation. Where the PT has been requested in writing by the executor or administrator to obtain a sealing in Kenya of any probate or letters of administration in respect of a deceased's estate the PT may without any further formality apply to court to seal the probate, letters of administration or any equivalent thereof.
 - b) **Administration to P.T. under certain circumstances:** The courts may in particular circumstances, of its own motion or otherwise, after having heard the PT, grant letters of administration under the Laws of Succession to the PT in spite of there being other person who would ordinarily be entitled to administer the deceased person's estate in preference to PT
 - c) **Administration of the deceased's estate without grant:** When deceased estate value does not exceed Kshs 500,000.00 and the deceased has died intestate or left a will, the PT may take possession of and administer the estate. The PT deals with all disputes, matters, claims and demands without referring them to court and his decision is final. Upon heirs availing to the PT, the required legal documents and cooperation from heirs, a certificate of summary

administration is prepared, signed and sealed by the PT. Where not exceeding Kshs 20,000 00 the PT may at any time after the expiration of fourteen days after the death of the deceased, grant to the person to whom probate or letters of administration might be granted under the Laws of Succession, on application, to administer the estate of the deceased.

- d) **Handing over estates to appointed administrators:** PT prepares and hands over an estate referred to her, within ninety days of receiving the necessary documents from the court appointed administrators. These documents include a signed and attested indemnity and discharge, a certified copy of the identification of the administrator/s, a copy of a set of petition documents certified by the issuing court, a copy of court filing receipt certified by issuing court, an original Kenya Gazette Notice or certified copy of Gazette Notice by Assistant Public Trustee and a letter requesting for handing over from the administrators. PT fees are half rate, where heirs have consented to administration by the PT

III. **Administration of trusts:** A trust is a relationship whereby property is held by one party for the benefit of another. A trust arises when property is transferred by one party to be held by another party for the benefit of a third party. It is also possible for a legal owner to create a trust of property without transferring it to anyone else, simply by declaring that the property will henceforth be held for the benefit of the beneficiary. Most of the trusts administered by the PT originate from the administration of estates or accidents compensation entitlement of minors in estates administered by the PT. The PT manages trusts accepted under the Trustee Act Cap 168 of the Laws of Kenya. These include trusts for minors, mentally ill persons, charitable trusts, WAKF commission, enemy's properties and custodian trustees:

- a) PT acts as a trustee where a minor is entitled to a share in the estate of a deceased person or where an award is made by the court to a person who is not of full age.
- b) PT may be appointed to manage the estates of a mentally ill person under (CAP 248) and is required to submit annual reports each year
- c) Charitable trusts aim at relief of poverty, advancement of education, religion or other purposes beneficial to the community.
- d) WAKF is a pious and perpetual religious endowment in Islamic law, typically donating a building or plot of land or even cash for Muslim religious or charitable purposes and devoting of its profit or products "in charity of poor or other good objects". WAKF properties are often inalienable endowment that is free from tax expressly reserved for the poor or for any other purpose recognized by Muslim law.
- e) The PT may act as a custodian trustee in respect of a trust or properties of schools, colleges and charitable organizations. A custodial trust agreement is an arrangement between two people where one party holds an asset as a custodian on behalf of the real owner. The PT holds custodial trust for title documents for institutions owned by government and wills for individuals at no charge.

IV. **Issuance of estate duty certificates:** In line with the Estate Duty Act, the Public Trustee is authorized to collect levy on behalf of government before estates are

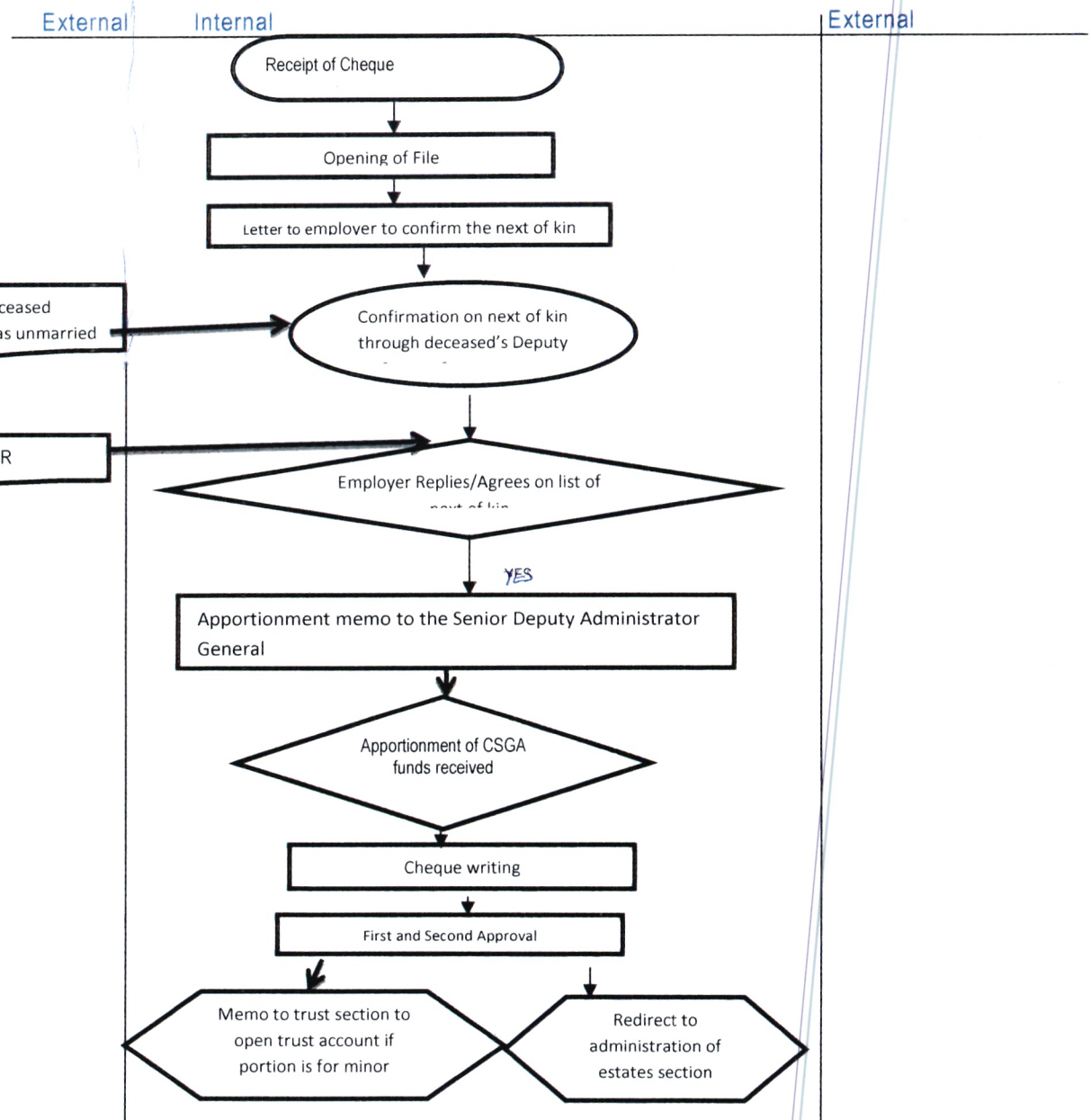
transferred to beneficiaries. Government suspended these services in 1985 but they are yet to be repealed.

Public Trustee administration procedures

3.05 The PT administration procedures for CSGA, estates and trusts are as detailed below :

a) Civil servants group accident claim (CSGA) disbursement process

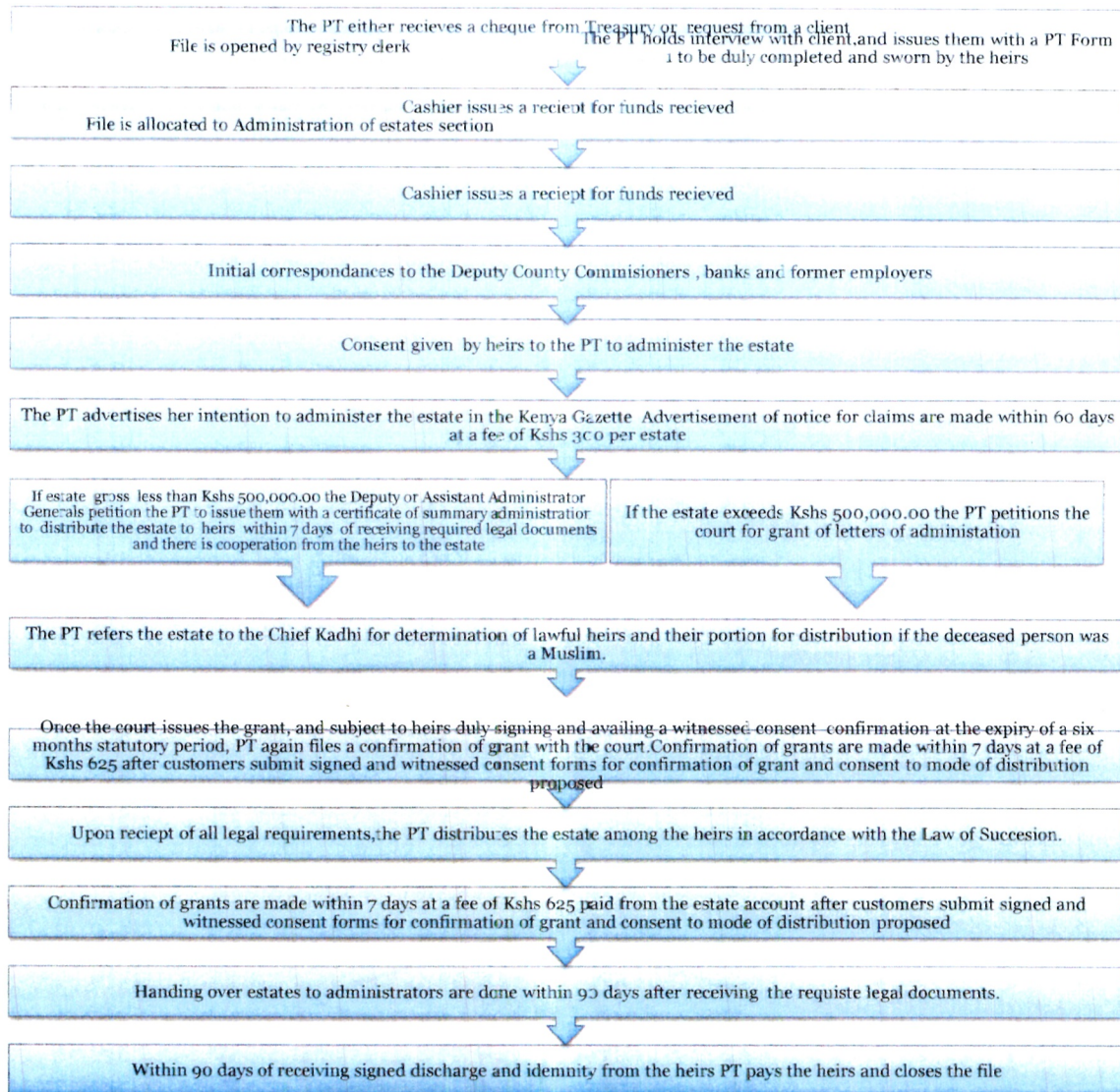
The PT receives CSGA claims from the National Treasury and remits them to the deceased dependents within 30 days at no charge upon receipt of requisite legal documents



Source: The Public Trustee;
Figure 1: Public Trustee procedure for administering CSGA funds received

b) Public Trustee procedure of distributing estates

Each PT office receives estates to be administered directly to them. The offices operate and prepare their accounts independently and at the end of each financial year forward their accounts to the head office to be consolidated.



Source: The Public Trustee

Figure 2: The Public Trustee procedure for administering deceased estates

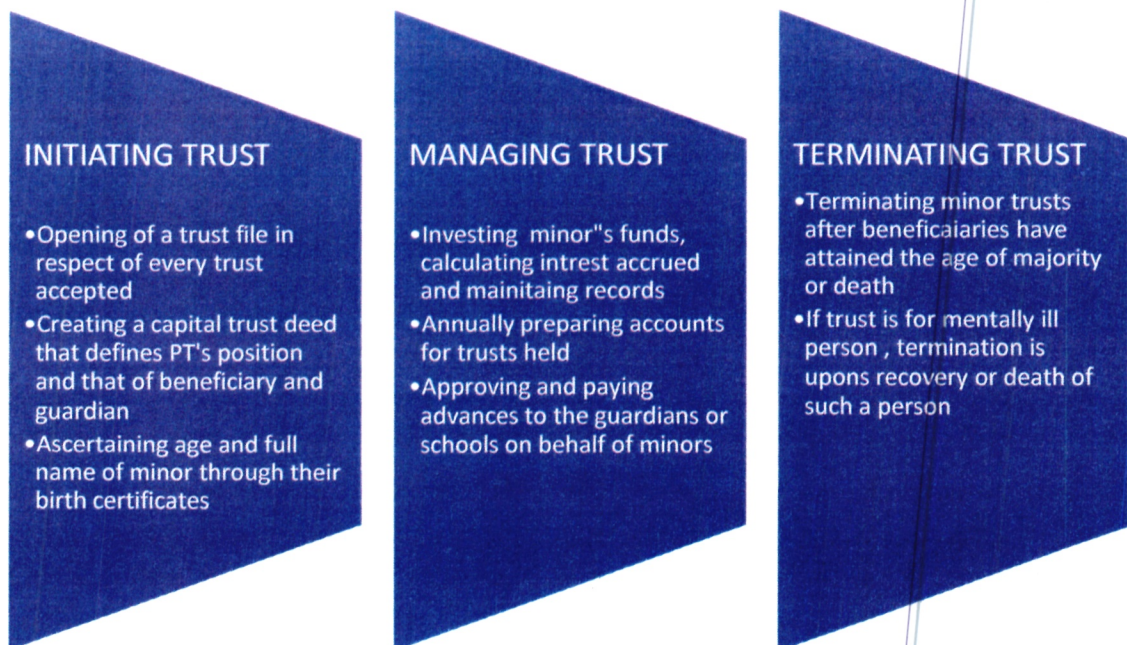
3.06 In the event the PT is unable to trace the persons or parties beneficially entitled to the residue of an estate it is transferred to unclaimed property account maintained at the PT's headquarters. If the residue remains unclaimed within twelve years the property becomes Government property or the PT may consider and pay any kindred of the deceased on proof.

Property Management

3.07 The PT is under statutory obligation to safeguard and maintain property left by the deceased or held in trust for the well-being of the beneficiaries. The PT only maintains the property under his care but does not develop them except for the purpose of winding up existing ones. After the transfer of the properties to the beneficiaries or purchaser the PT hands over the management to them. The management of these properties entail collecting rent due and tracing defaulters, maintaining buildings and equipment's, looking after the welfare of the tenants as well as the interest of the beneficiaries, ensuring that ground rents and other taxes are paid, retention and supervision of estate agents who are delegated with the functions of managing the properties by the PT and insuring the properties. All property management in PT's regional offices is conducted in liaison with the property management at the head office.

c) Public Trustee procedure for managing trusts

PT trust work is carried out only at the head quarters in Nairobi. PT regional offices on closing of estate administration files forward the net inheritance shares due to minors to the headquarters for management in trust. The PT manages the trust until all funds are paid to the minor or upon the minor attaining the age of majority. The PT procedure for managing trusts involves:



Source: The Public Trustee

Figure 3: The Public Trustee procedure for administering minor and mentally ill trust funds accepted

3.08 The PT process for administering WAKF and other charitable trust funds is similar in that a file, capital trust deed and ledger account are opened and maintained. The funds are also invested and accounts prepared annually. However these trusts are rarely terminated and are administered for many years.

Public Trustee stakeholders

3.09 The Attorney General has categorized its stakeholders in four groups.

Stakeholder Group	Stakeholder's interest in the Affairs of Public Trustee
Subjects: Public, private sector, Kenya School of Law, Copy right Board of Kenya, media, state corporations and defund Local Authorities	Have high interest but low power in PT affairs, thus need to be educated and empowered in PT activities
Context Setters: Cabinet, parliament and development partners	Have high power and interest in PT affairs and need to be collaborated in SLO activities to ensure that funds, allocated towards the PT office are used for the intended purpose
Players: PT staff, government ministries and departments, Law Society of Kenya and Kenya National Commission on Human Rights and Anticorruption Commission	Have high interest and high power and need to be consulted and involved in SLO activities so that that estates and trusts held by the PT Office are managed efficiently and distributed in accordance with the Law
The Crowd: Faith based organizations and service providers	Have low power and low interest thus needed to be informed and educated in SLO activities

Source: SLO strategic plan 2008 - 201 page 40 & 44

Table 1 The Public Trustee procedure for administering deceased estates

Public Trustee sources of funding

3.10 PT funds are appropriated from GOK exchequer account under State Law Office Vote R125. 80% of PT's recurrent consists mainly of salaries and allowances and the remaining is for general operating costs of the Administrator General department. Appropriations in Aid receipts are mainly from receipts from PT fees and charges.

Table 2: The Public Trustee funding from financial years 2007 to 2012

Year	Recurrent vote			Development	
	Total allocation Kshs	Actual expenditure Kshs	Variance Kshs	allocation Kshs	expenditure Kshs
2007/08	78,476,832.00	75,507,215.00	2,969,617.00		
2008/09	116,505,924.00	107,316,939.00	9,188,985.00		
2009/10	149,993,002.00	147,714,571.00	2,278,431.00		
2010/11	131,628,863.00	133,519,864.00	-1,891,001.00		
2011/12	195,455,458.00	188,280,284.00	7,175,174.00		
2012/13	198,191,540.00	185,434,000.25	12,757,539.75	10 Million	5,590,391.00
TOTAL	870,251,619.00	449,221,499.25	32,478,745.75		

Source: GOK printed estimate

Chapter 4

Findings of the Audit

4.01 There are several advantages of appointing the Public Trustee (PT) to execute one's will or administer a deceased's estate which include :

- There is a guaranteed continuity of office since the PT's office has perpetual succession
- The PT fees charged are fair and regulated by statute thus not subject to rapid change
- The PT does not have to give a surety bond for double the gross value of the estate to the High Court of Kenya as required in the case of an individual applicant or administrator
- The PT services are indemnified by the Government against loss, waste or damage
- In addition, by 2013 the office of the PT had reviewed its processes and procedures and related supporting laws to improve efficiency of its operations .e.g. PT significantly reduced its stipulated service delivery timelines, PT also reviewed its laws and increased the summary administration of estates from Kshs 100,000.00 to Kshs 500,000.00. A certificate of summary administration is prepared and forwarded to the PT for signing and sealing upon cooperation and heirs availing the required legal documents and are often faster since they are not subjected to lengthy vigorous legal process in courts.

4.02 The audit aimed at establishing whether the Public Trustee has put in place adequate systems for effective administration of Estates, Trusts and Civil Servants Group Accident claims (CSGA). Systems are a group of things made up of tangible and intangible components and processes which work together to achieve a common objective. Optimum performance is determined by all components performing satisfactorily. Sub-optimal performance of the whole system can be caused by poor performance of just one active component. PT components include people, authority, plans, assets, procedures and methods, information, machines, customers and facilities. The audit reviewed PT's operational activities and found that the systems put in place did not ensure effective achievement of set plans, accurate accounting and reporting of activities and service delivery.

The PT systems do not ensure effective achievement of set plans

4.03 The Administrator General has recognized the challenges the Public Trustee (PT) office faces and took steps to address the Attorney General's 2008 – 2013 strategic plans. The Public Trustee operations depend on resources provided for under the voted provisions since the Public Trustee Fund is managed solely for the benefit of the beneficiaries. However the audit found that PT's voted provisions' operational, budgeting and resource allocation were not always directed at achieving set strategic objectives. Thus the PT's Business Process Management System was not delivered as contracted neither were legal services improved as strategically planned as detailed below:

PT's Business Process Management System was not delivered as contracted

- 4.04 In 2007/08 fiscal year, the Attorney General's office, procured the services of Eurocomms Consultants Ltd at Kshs 8,500,000.00 to install a Business Process Management System (BPMS) for the Public Trustee office. This amounted to 11% of the PT's total recurrent expenditure for that year. The overall objective of procuring the BPMS was to automate all PT services with a secure and reliable application that was to integrate all documents submitted by any estate with all payments and receipts. The BPMS contract period was four months from date of commissioning. PT's BPMS was installed in February 2009 and commissioned by the Attorney General on 15 February 2010. However four years later as at February 2014, the audit found that the BPMS still had not been used as intended nor added any value or improved PT service delivery, since it was not delivered as designed :
- i. The terms of reference of the BPMS contract stated that all PT's regional offices were to have dial up/lease line communication link that could submit information to PT's headquarters. The BPMS application was to link the PT's headquarters with all its eleven regional offices. The BPMS was also to automatic dial PT's head quarter server and upload all data in order to improve services and address challenges posed by paper files. However the audit found that by February 2014, four years after the installation of the BPMS, the PT services and regional offices did not have a dial up / lease line that could submit information to the PT head office and the offices had not been interlinked as contracted.
 - ii. The consultant was also to develop an accounting system to automate PT's accounting operations. However the audit found that PT accounts operations in 2014, were still entirely manual. The BPMS was not in use at the accounts section and updating of ledgers and cashbook, calculating interest was being done manually. The BPMS was being used for data entry only. PT registry staff keyed information about the deceased estates in the BPMS however the information keyed in did not progress to preparing accounts or updating ledgers.
 - iii. The overall objective of procuring the BPMS was to automate all PT services with a secure and reliable application. However , the audit found that the BPMS's application controls had several weaknesses and potential vulnerabilities that presented an inherently serious risk to the PT's system controls:
 - a) **Data captured in the BPMS was not completely filled nor accurately captured:** The data migration procedure to the BPMS was found to be inadequate. Data Migration is the movement of data and information from one system to a new system with enhanced capabilities. An adequate data migration ensures that data integrity and completeness is maintained with appropriate personnel sign off's for the data being migrated. The audit found that PT data at the headquarters had been captured in the BPMS from all ledgers being opened and maintained, detailing all monetary transactions relating to the estates that the PT was executing or administrating. However PT headquarters ledgers were still being updated manually for payments made, hence data migration was not complete. The audit also found that information entered in the BPMS was neither accurate nor protected against unauthorized disclosure, manipulation or destruction and could thus not be used to make meaningful decisions. The BPMS was also being used for data entry only and could not avail any reports. The system was unable to do calculations of interest, and was not robust enough to produce a final account when the PT needed to finalize estates.

- b) **The BPMS did not define access and security requirements.** The system did not define which users, how many, where located and when they will be given access to PT information. Accessibility to information in PT's accounts section or other sections was not restricted. The BPMS did not define the access restrictions for groups and sub group of users' i.e. who is authorized to read, add or delete PT information in the system. The BPMS programmed controls were inadequate so as to limit access to information among users. The audit noted that the data entry clerks at the registry could view and easily maneuver information in PT ledgers and cash book since accessibility to information that should be entered only by the accounts section or any other PT sections was not restricted. Also the BPMS did not define who is authorized to update, modify, delete and/or view data in the system. In addition the BPMS was not auto-generating the relationship of heirs to the deceased and did not have risk measures to safeguard information and maintain accurate records of transactions. The BPMS allowed users to make unauthorized changes and it was easy to manipulate the system and generate fictitious cheque orders for non-existent beneficiaries. System activities were also not secure and the PT's information security systems, segregation of duties, system efficiency and data integrity had been seriously compromised by the BPMS. For instance, a sample of an audit trail revealed that a staff of the Attorney General was modifying data in the BPMS on weekends, as tabulated below, without the knowledge or approval of the Administrator General within a period of six months.

Table 3: Transactions made in BPMS by one staff member without knowledge or approval of the Administrator General

	ACTION	Number of estate files modified
1	Making various critical approvals in deceased estate file entries. Such as approvals to : - Advertise on Kenya Gazette, Apply for Letter of Administration, Apportion Memo and Statutory Declarations, Certify Confirmation of Grant to Original 'Cheque Order', Guarantee Confirmation from Stakeholders' for deceased persons, Expense Payment and Cheque Writing, Consent to Confirmation of Grant, Convey Assets to Heirs, Grant of Letter of Administration, Issue summary certificates, Sign and Seal of estates, Obtain Ledger Balance and Approvals, Receiving of Signed Consents, Reply from DC's, Replies from stakeholders, Send Consent Letters to Beneficiaries, and Signing of Consent Letters.	75
2	Assigned - User 'Administration rights to alter District Commissioner s Confirmation from Stakeholders' for file	5
3	Inserted Client Receipts	3
4	Inserted Client Withdrawals	10
5	Inserted Estate Advances Applications	1
6	Inserted Estate Withdrawals	1
7	Inserted General Information for Clients	206
8	Inserted Incoming Receipt Documents	105
9	Modified General Information for Clients	310
10	Modified Incoming Receipt Documents	2
11	Raised Receipt Details	44
	Total sampled transactions made by one staff	762

Source: OAG audit analysis of PT's BPMS

- c) **The PT's BPMS general and application controls were not also adequate.** Given the fiduciary duty and stewardship role the PT, it is expected that records of all transactions maintained be accurate at all times. However the audit found that PT's BPMS had no controls over critical applications to ensure that processing accomplishes the correct task, and data integrity is maintained. The audit found that the BPMS's processing results were weak. Further data keyed in at the PT registry on the general information of the deceased did not go a further step than being keyed in to the system. Thus, information maintained in the system had errors, missing information and inconsistencies among related data items. In addition the system had loss of data integrity, incomplete, unaccountable and unreliable data and therefore processed inaccurate information. For instance:

- Sampled estates in the system revealed incomplete information. Vital information about the deceased persons crucial for administration such as where they hailed from, name of former employer, place of death, physical and postal address, marital status among other details were found omitted in the system
 - According to the contract, the BPMS was to have versioning features to track, document and process revisions made. However the audit revealed that the system had inadequate duplicate checks to match new transactions or data to those previously input and ensure that they had not already been entered in to the system. Some estate files were found entered many times without the system recognizing or rejecting the entries resulting to unreliability of information processed and generated by the system.
 - The BPMS had no provision for selecting signatories and could not track and document previous revisions made. The system also had no provision for selecting signatories for cheque orders, summary certificates or trust deeds
 - PT's records are perpetual and should be easily accessible and available for scrutiny and interrogation on demand. However the audit found that records in PT's BPMS were not easily accessible and available for scrutiny and interrogation.
- d) **The PT had no service level agreement between the ICT department and PT staff** to explain the expectation and responsibilities of the ICT staff and end users in terms of ICT staff deliverables, contact persons, services available and the lead time in solving problems encountered, hence a lack of accountability
- e) **The PT lacked a safe data center** to keep and operate ICT infrastructure that support PT operations. PT's data center had both physical and logical security controls; however it also acted as a store, with several boxes and old computers accessories. The boxes were highly combustible putting the data center at a risk of fire breakout
- f) **Staffs did not have adequate directions on how to use the BPMS:** The audit found that no ICT Staff except the Acting Director had been trained on the Business processing system and could therefore not offer the necessary ICT support to users when it is required. In addition the BPMS system configuration was found to have a problem for instance the accounts section stated that if they get stuck while using the system, the BPMS shows "no path found and they cannot progress. The BPMS user manuals had not been circulated to the staff to direct and guide them on data entry at every stage.

4.05 PT's BPMS was neither secure nor reliable and resulted to reduced productivity of PT's service delivery, dissatisfaction among users and wasted taxpayers' funds. Procurement and delivery of the BPMS was not handled with prudence and had:

- **Contract design and definition failures.** The BPMS contract did not clearly specify what information was needed to assess the consultant's performance or how it will be collected. Specific review points, targets and quality standards were not stipulated in the contract to ensure the BPMS is regularly monitored against clear performance targets. The contract did not specify a system that ensures that there is reliable and unbiased data available to measure performance. The consultant's payments were pegged on verification of delivery by the Attorney General's Principal ICT officer as follows: 30% after workshop for implementers, another 30% after successful testing of the Accounting software, final 30% after successful completion of tender and the 10% retention after commissioning. However the audit found that by March 2014 the consultant had been paid Kshs 6 million being 80% of the contracted sum of Kshs 8.5 million yet the contract had not been completed four years later.

- **Project decision making failures.** The Attorney General's Internal Auditors were not included to assist the consultant in developing necessary controls that would give the PT assurance of propriety and control of the system. Later a team of staff from the PT were put together to work with the consultant to address challenges exposed by the users during an interrogation of the BPMS. Challenges noted were not satisfactorily addressed and the matter was forwarded to an interdepartmental task force that developed an action plan after interactive sessions with the consultant with a completion date of 6 January 2011. Three years later as at March 2014, outcomes of the BPMS consultations and actions that needed to be addressed for the system to function remained unresolved due to lack of clear and effective directions. Project spillages were also never managed effectively to ensure the BPMS was delivered on time and as required nor were there any contingency plans in place to address implementation problems when they arose.

The PT legal services were not improved as planned

4.06 From the year 2008 the PT annually returned between Kshs.2,278,431.00 and Kshs12,757,539.75 of recurrent funds allocated to the PT office (as tabulated in table 2 of this report) instead of requesting for authority to spend unutilized funds towards the Attorney General's year 2008 – 2013 strategic plans aimed at improving PT's service delivery to all Kenyans such as decentralizing, providing services online, creating public education and awareness of services offered, automating PT services and enhancing interagency collaborations by 2012. Thus as at March 2014:

- a) **PT services were not yet fully decentralised:** Initially the PT's office was a section under the department of the Registrar General in the Attorney General's office. Notwithstanding the enactment of the Law of Succession, that came into operation on 1 July 1981, incidents of grabbing or intermeddling with assets of deceased persons under the pretext of customary laws was rampant in Kenya. To curb this vice, in 1987 PT offices were decentralized so that proper services relating to administration of estates could be brought closer to the people.

In 1991 the PT's office was established into a department by then PT offices were only in Nairobi, Mombasa, Kisumu and Nyeri. By 2012 the PT had established twelve regional offices. In 2012/13 parliament allocated the Attorney General Kshs.10,000,000.00 for infrastructure and civil works in PT field offices. However funds allocated were spent in activities that were not factored in the Attorney General's 2011/12 or 2012/13 annual procurement plans. Kshs.5,000,000.00 was used to partition the Attorney General's offices in Nyeri while Kshs.3,000,000.00 was used to re-roof office buildings in Machakos. Failure to create mini legal satellite offices with the development funds allocated to the PT meant that many PT estate files have to be administered within the PT offices with insufficient staff and the vice of grabbing and intermeddling with assets of deceased persons continued to be rampant within Kenya.

Regional cases of vice of meddling with deceased persons properties in Kenya.

The audit found that as at June 2014:

In Kisumu: The estate of a deceased prominent Kenyan who had left behind three wives and several properties had delayed in court since 1997, as the family members wrangled. One of the daughters had applied for letters of administration claiming to be the sole heir. The PT was managing the properties on behalf of the beneficiaries. However rents being collected from the properties were much less than the market value due to legal constraints such as earlier leases agreements and waiting of lengthy court verdicts. For instance the deceased left a nursing home in Muhoroni where in 2014 the PT was collecting a monthly rent of a mere Kshs 22,000.00 up from Kshs 10,000.00 in 2008 instead of the market value of almost Kshs 50,000.00. Similarly two prime commercial buildings in Kisumu for the same heirs,

were collecting merely Kshs.12,000.00 and Kshs 13,000.00 each instead of the current market value of over Kshs 35,000.00 each.

- Similarly the son of another prominent deceased person, who died in 1970, obtained letters of administration secretly and sold the deceased property to a politician without the consent of other heirs. Years later as at 2014 the case was still in court awaiting verdict and the estate was referred to the PT for administration. However the PT faces challenges to increase rent to market value as they have to wait for the court verdict, in addition to the title deeds and authority to collect rent being from the two different owners (heirs and politician)
- In another case due to the wrangles among family members who refuse to sign legal documents for grant confirmation the PT finds it difficult to even advance maintenance or fees from property being managed to the heirs.

In Nakuru: A Kenyan woman died leaving behind two properties in prime areas. Unfortunately the sons of the deceased woman for years refused to let their sisters inherit any part of the properties left behind. In 2012 the estate was referred to court and the sons agreed to share the property equally, however by then one of their two sisters had died. By 2014 the estate was still being managed by the PT as they awaited the court verdict. In a different case widow refused to declare all the exact details of their deceased husbands' properties since 2004. As at 2014, the case was still in court while the PT managed and advanced proceeds of only one of the property among the heirs.

In Nyeri: A deceased person left behind two properties and two widows each with a daughter. However the PT was managing the properties due to wrangles among the families'. Both widows and daughters eventually died without reaching an agreement and to date the PT still manages the properties on behalf of their surviving heirs.

In Mombasa: Generally, there is a problem of ownership of properties in the coastal region where people own houses without land title documents. Most of the coastal land have no legal titles and there is no law to govern ownership of buildings on land where no ownership documents are available. In addition;

- At times families denied the legitimacy of children or marriage to deceased persons born before acquisition of marriage certificates. This placed a heavy emotional burden on widows who risk losing any claim to the estates if they fail to prove that they were married or that her children belonged to the deceased without timely documentation needed to prove marriage or fatherhood.
- Despite efforts to sensitize residents on the importance of legal documentations via barazas, books, and lectures in mosques and at homes, many residents still failed to register their births, marriages or properties which made identification of rightful heirs and distribution of deceased property difficult.
- At times different Kadhi courts gave diverse interpretations and rulings on succession matters. Since there is no code of laws or specific guidelines to guide for uniform decision. Disgruntled heirs have to appeal the high court to contests ruling which delays administration
- If there is no will bequeathing the portion of the estate to a non-Muslim wife married to a deceased Muslim man she has difficulties inheriting his estate. Stipulated portion for non-Muslim wife can be ¼ or 1/8 of her deceased spouse's estate

By March 2014 the PT had established offices in only twelve of Kenya's forty seven counties. The geographical areas, population and estates administered by these offices, as tabulated below were enormous and Kenyans were still travelling unreasonable long distances to access PT services as tabulated below:

Table 4: Geographical areas and population covered by PT offices

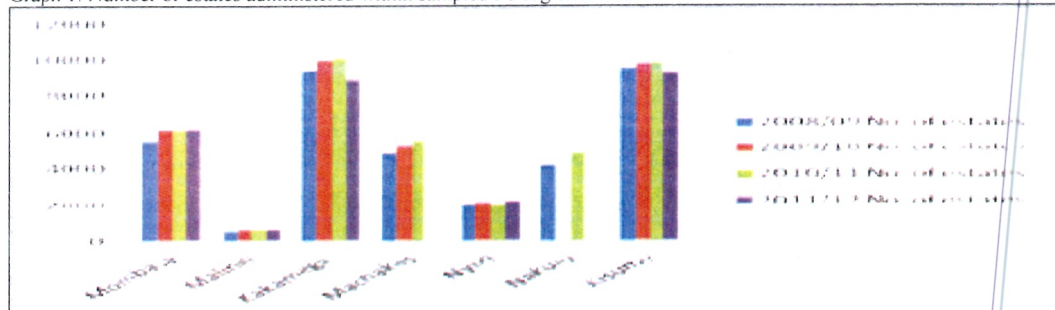
PT Office	Counties covered	No. of counties	Area (km ²)	Population
Mombasa	Mombasa, Kwale, Taita - Taveta	3	25,566.7	1,873,958
Malindi	Malindi, Tana River, Lamu and Kilifi	4	54,119.4	1,451,349
Garissa	Garissa, Wajir, Mandera, Marsabit and Isolo	5	219,617.7	2,745,217
Embu	Embu, Meru, Tharaka- Nithi	3	11,695.5	2,237,843
Machakos	Machakos, Kitui and Makueni	3	38,346.9	2,995,820
Nyeri	Nyeri, Nyandarua, Kirinyaga, Muranga	4	8,999.9	2,760,461
Nakuru	Nakuru, Samburu, Laikipia, Narok, Kajiado, and Kericho	6	56,763.80	3,829,815

Eldoret	Uasin- Gishu, Baringo, Bomet, Elgeyo - Marakwet, Trans, Nzoia, West Pokot, Turkana Nandi,	7	32,850.80	4,634,279
Kisumu	Kisumu, Busia, Siaya, Homa Bay, Migori	5	1,1875.1	4,436,123
Kisii	Kisii and Nyamira	2	2,230.4	1,750,584
Nairobi	Nairobi and Kiambu	2	3,144.1	4,761,651
Kakamega	Kakamega, Vihiga and Bungoma	3	5,772.00	3,590,336
	Total	47	471,182.30	37,067,386

Source: Kenya Population Census 2009

N/B: Since Kenya vastly populated the counties and residents served traverse at times within them

Graph 1: Number of estates administered within sampled PT regional offices



Source: OAG analysis of PT documents

- b) **PT services were not yet being offered online:** PT services were not yet being offered online. Systems on how to offer PT services online were yet to be put in place since the office had not yet been automated and also because estate administration is often based on face to face contact with clients.
- c) **Staff insufficiency had not been effectively addressed :** PT services are of a specialized nature as they involve collection, management and subsequent distribution of both movable and immovable property under either estate or trust. As such essential PT staffs should include Lawyers, Accountants and Property Managers, supported by a team of trained clerical officers and records management officers who can double up as para legal staff and are well versed with the technical duties of the PT. In his 2008 strategic plan the Attorney General directed the Solicitor General to attract and retain 441 qualified PT staff, among other Attorney General staff, so as to enhance staff capacity from June 2008 to June 2013. By 2013 parliament authorized and allocated funds for 384 staff within the PT offices. However the audit found that as at January 2014 the PT offices still had a variance of 223 which was 49% below the Attorney General's planned staff level for the PT offices as tabulated below since staff capacity was not enhanced as directed.

Table 5: Comparison of staffing levels at the PT office as at May 2013

Designation	Staff planned as per 2008-2013 strategic plan	Staff authorized as per 2013 national budget	Officers in place as at January 2014	Variance between planned and actual staff
Total Legal staff	76	76	40	36
Accountants	26	8	22	4
Estate duty valuers	2	0	0	2
Records management officers	43	29	10	33
Clerical officers	144	132	97	47
Others	150	139	49	101
Total	441	384	218	223

Source: SLO 2008-2013 Strategic Plan, GOK national Treasury Recurrent estimates and SLO human resource documents

- The audit found that the PT did not have sufficient staff in her regional offices thus service had to be delivered under severe constrains. For instance for between one to three years, PT Kisumu, Malindi and Kakamega offices, did not have accountants. This resulted to undue delays in payments for beneficiaries who had to wait for accountants from other PT

offices to create time to endorse their cheques and finalize estate accounts. Completed estates files were not being paid out for up to 8 months resulting to large pile up of finalized files awaiting payments. By January 2014, the PT office had a total of 218 officers which included 40 lawyers and 22 accountants with the rest being support staff. This resulted to staff being overworked and taxpayer being subjected to high overtime payments. For instance in the fiscal year 2009/10, PT staff were paid a total of Kshs 10,402,433.95 as overtime by 30 June 2010. Of the Kshs 10,402,433.95 PT staff at head office was paid Kshs 4,231,128.00 and regional offices a total of Kshs 6,171,305.95 as tabulated below. The overtime payments amounted to 66% of the total basic salaries for PT regional offices of Kshs 4,087,800.00 and 7% for staff at head office of Kshs 63,392,098.00 for the same fiscal year.

Table 6: PT Staff overtime payments in 2009/10

	Head Office	Uasin Gishu	Kisumu	Malindi	Kisii	Nyeri	Nakuru	Machakos	Mombasa	Kakamega	Embu
Aug. 2009	169,374.00										
Aug. 2009	692,655.00										
Sept. 2009	592,083.00	156,144.00									
Oct. 2009	24,360.00										
Oct. 2009	561,750.00										
Oct. 2009	561,751.00										
Nov. 2009	491,360.00		114,905.95	81,882.00	181,355.00	135,695.00	191,863.00	409,360.00			
Nov. 2009			691,264.00								
Jan. 2010		187,444.00	797,773.00	28,713.00	281,815.00	166,464.00	225,109.00	437,022.00	272,684.00	590,429.00	
Jan. 2010								40,780.00	323,278.00	450,900.00	
Mar. 2010	748,440.00						47,164.00				246,147.00
April 2010	191,500.00				28,389.00	18,432.00		11,976.00		50,314.00	
June 2010	197,255.00										
Total	4,231,128.00	343,588.00	1,603,942.95	110,595.00	491,559.00	328,595.00	464,136.00	899,138.00	595,962.00	109,1643.00	246,147.00

Source: OAG review of PT documents

- d) **PT operations are not yet automated.** The PT's office along with other departments in the Attorney General's office improved operational efficiency by reviewing their processes and procedures, supporting laws and implementing a quality management system as strategized. However strategic plans, were not clearly integrated and reflected in the PT activities and decision making processes thus by May 2014, the PT had not yet automated its operations as had been planned to be done by 2010. All PT operations were still entirely manual which slowed down and hampered service delivery
- e) **PT's public educational and awareness activities were not effectively carried:** The Solicitor General and the Administrator General were to sensitize the public on PT laws and services by holding workshops, talk shows, press releases and conferences from 2008 to 2012 in an effort to improve legal services to all Kenyans. However resources were not allocated for such activities and they remained undone over the four year period. Interviews conducted during the audit with the public and various stakeholders indicated that, the public was not aware of PT services and procedures thus:
- Administration stalled and faced challenges when the beneficiaries were not cooperating with each other thereby giving wrong information about all the rightful heirs. Succession conflicts and family wrangles have to be resolved in court and the PT can only start administration after getting the court order
 - Also brokers/middlemen took advantage and extorted large sums of money from beneficiaries in the pretense of helping them fill PT forms and legal documents at a fee with the hope of getting their funds faster.
 - Lack of public awareness further inhibited institutions and the public from utilizing PT's custodian trustee services. The common trend was that most public institutions preferred keeping their title documents in their institutions so that they can readily use them as collaterals. The PT only registered eight wills from 2008 to 2013 at its headquarters and

2174 title documents from 1975 of which as at May 2013 only 314 were remaining in their custody. Failure to ensure safe custody use of important public title documents with the PT at no charge by the public and institutions increased risk posed to them of loss, fire and destruction.

f) **PT inter-agency collaboration activities were not well managed:** In line with the Attorney General's 2008 to 2013 strategic plans, the PT was also to manage inter - agency collaboration by developing and disseminating guidelines and manuals, holding workshops/visits and having reports on scheduled consultations by 2011. Between June 2008 and February 2014, only one consultation visit was done by PT headquarters staff to stakeholders with its regional staff and the PT visited several ex officio agents to enhance awareness of PT services. PT guidelines, manuals, workshops and scheduled consultations were not done by May 2014 since resources were not allocated for the activities. The audit found that there was poor PT inter agency collaboration which led to delay of crucial activities:

- The PT relies on employers to provide details and the Deputy County Commissioners (DCC) to verify and confirm information on deceased person's next of kin before they can start the administration process. The DCCs rely on their chiefs to gather the information since they interact closely with people in the villages. However the audit found that it took unreasonable time for the DCCs' to provide correct information on rightful heirs. Some DCC's had to be reminded over four times to respond and be reminded of the rightful procedure in identifying correct legal heirs. For instance, in Machakos the audit found that Deputy County Commissioners (DCC) took up to 124 days while employers, in the same region at times, took up to two years to respond to PT enquiries despite repeated reminders. In contrast DCC and chiefs in Kakamega and Kisumu were found to be well versed with PT activities and responded fast and correctly to PT enquiries. Discussions held with the DCCs, Assistant county commissioners, chiefs and employers revealed that due to transfers and retirements not all had adequate information to enable them offer appropriate advice to Kenyans on PT services and correctly respond timely to PT enquiries. For instance at times some DCC's provided a second list of deceased dependants long after CSGA funds had been apportioned and released and interested parties had to seek necessary orders from courts The PT had not collaborated with chiefs to share with the public at monthly Barazaas the requirements and benefits of its services
- The PT cannot administer any estate above Kshs 500,000.00 without the authority of the Judiciary. Succession and land matters often have only one judge in a region to handle the cases. A time taken between date of filling an application and the date court gives a date is too long. However the PT had not engaged in effective consultations with the judiciary who is a key inter agent of PT affairs to look for ways of faster delivery of services. Due to high court delays, PT staffs at times had to type required court documents for faster administration. However it was still taking long for courts to give PT hearing dates. For instance the audit found that, in Nakuru the court had not diarised PT hearings for over six months (October 2013 to April 2014). In Kisumu, PT hearings for deceased person's estates were also often adjourned at times for up to a year. The audit was also informed that at times judiciary issued Succession Form 30 to both the PT and beneficiaries authorising them to administer the same estate resulting to confusion, waste of valuable resources, duplications and administration delays as both parties reapply for clarification with the courts. PT files were also at times misplaced in courts e.g. PT files were misplaced in Mombasa for years at the court premises during renovations and had not been traced time by December 2013.

- The PT also cannot administer without advertising in the Kenya Gazette through Government Printers so that anyone with interest in the estate being administered to come forth. However the audit found that at times it took months for the PT regional offices to consolidate and physically bring the list of estates to be advertised in a flash disk to the Government Printers offices in Nairobi. At times it also took months for the Government printer to publish the estates. It was the view of some PT staff that with enhanced interagency collaboration details of estates to be advertised can be sent to the Government Printers through a secure line for faster and cheaper services.

PT systems were not adequate for reliable accounting and reporting

4.07 The Administrator General maintains four Public Trustee accounts: Administration Accounts which accounts for funds for estates being administered, Investments accounts for beneficiary funds not immediately required that have been invested, Sundry Estates Account for funds used for the day to day operations of the office and Trust Estates Account for trust funds being held. Annually the Administrator General submits financial statements for these four accounts to the Auditor General for audit which have in the past years attracted qualified opinions. Detailed financial anomalies that formed the basis for the Auditor General's qualified opinion on PT's financial statements can be viewed on the OAG website. PT systems were not adequate for reliable accounting and reporting of PT activities thus PT did not always generate accurate financial statements, there were overdrawn estate accounts and returns on beneficiary funds invested were not consistent with returns received

- a) **The PT at times does not generate reliable financial statements** : In the fiscal year ending June 2012 the Auditor General revealed that the PT financial statements lacked details and contents stipulated in International Financial Reporting Standards (IFRS). Further :
- PT's financial statements had no provision for doubtful investments and bank deposits** : PT services are indemnified by the Government against loss, waste or damage. The PT however still maintains a fiduciary responsibility and stewardship role to ensure that the office prevents, reduces and counteracts problems as they emerge. The audit found that due diligence had not been done by her accountants for up to ten years as would be expected. Some of PT's deposits in collapsed financial institutions were eventually converted into shares, after many years, out of which dividends are paid from time to time. However no provisions had been made in the financial statements for deposit and investments that had been held in three defunct financial institutions (Consolidated Bank of Kenya Ltd, Trust Bank Ltd and City Finance Bank Ltd) and for unconfirmed and doubtful deposits that may not be recoverable totaling over Kshs five hundred million as tabulated below.

Table 7: Doubtful investments and deposits without provisions

PT Account	Nature of financial anomaly	Amount (Kshs)
Administration Account	Unconfirmed bank deposits	125,000,000.00
	Unconfirmed investments	145,000,000.00
Investment Income Account	Deposits held in institutions under liquidation	148,263,204.00
	Investments in three defunct financial institutions	82,664,861.00
Trust Estate Account	Unconfirmed deposits	5,000,000.00
Sundry Expense Account	Unsupported bank deposits	20,000,000.00
	Deposits in three defunct financial institutions	6,466,904.00
Total		532,394,969.00

Source: OAG audited reports

- **PT financial statements included significant errors and omissions :** The Auditor General reported that the Public Trustee's 2012 financial statements included significant errors and omissions. PT investment income account's bank statements included receipts and payments not entered in the cash book totaling over Kshs 7.6 million. PT's Investment Account balance sheet also reflected a liability of unascertained creditors balance amounting to over Kshs 91 million and interest payable of Ksh 184 million whose existence and validity could not be ascertained. The Administration Accounts also reflected long outstanding bank receipts not reflected in the cash book from various PT offices totaling over Kshs 198 million, unexplained difference of Kshs 10 million in its assets accounts and the accuracy of Cash and Bank amounting to over Kshs 62 million reflected could not be ascertained .PT estate account reflected a bank figure of Kshs 381 thousand whose existence and validity could not be ascertained. While PT sundry expense financial statements reflected a stale cheque of almost Kshs 6 million relating to a Treasury bill issue which had not been reversed in the cash book.

b) **PT had overdrawn estates :** Audited PT accounts have over the years reflected overdrawn estate payments to beneficiaries running up to Kshs 5,027,708.00. The overdrawn accounts, reflected in the Public Trustee accounts dated back to the 1990s despite there being virtually no new overdrawn accounts during the period under review. The audited financial statements and interviews conducted, attributed the overpayments to interest rates due from the headquarters, poor record keeping, inadequate authorization payment controls, low staffing levels and delays in updating ledger balances regularly. The PT recovered the amounts overdrawn directly from her staff over the years which greatly reduced the vice to Kshs 6,170.00 by 2013 as tabulated below:

Table 8: Consolidated overdrawn estate payments by the PT

Years	Overdrawn	Estates
2007/08		3,316,367
2008/09		5,027,708
2009/10		2,467,650
2010/11		3,516,731
2011/12		2,158,743
2012/13		6,170

Source: PT annual accounts

The audit noted that some PT offices had more cases of overdrawn estates than others. PT Kisumu office had the highest amount of overdrawn estates which could be attributed to the fact they did not have an Accountant in the office for a long time. In contrast Nairobi, Nyeri and Machakos had senior accountants and recovered their overdrawn estates within two years.

Table 9: Comparison of PT overdrawn estates among regions between 2008 to 2013

REGION	2008/09	2009/10	2010/11	2011/12	2012/13
NAIROBI	2,610,694.00	243,114.00			
KISUMU	1,521,164.00	1,398,051.00	1,481,582.00	1,609,927.00	
MACHAKOS	14,602.00	236.00			
NYERI	7,885.00				
MOMBASA	661,167.00	626,951.00	659,374.00	326,589.00	
KAKAMEGA	145,400.00	89,417.00	1,255,355.00		
ELDORET	6,080.00	7,306.00	15,632.00	3,169.00	
EMBU	55,445.00	74,874.00	77,667.00	127,304.00	
NAKURU	5,271.00	22,647.00	1,457.00	60,205.00	6,170.00
KISII	0	5,054.00	22,104.00	31,549.00	

Source: OAG analysis of PT records

c) *Returns received on beneficiary funds invested were not consistent with what was paid to the beneficiary accounts* : The Public Trustee Act CAP 168 provides for the Public Trustee to invest estate and trust funds not immediately required for the purposes of administration in authorized investments. Funds available are pooled together and may be invested in medium or long term investments. Funds invested should not fluctuate in a manner that makes the investment unreasonable and should be beneficial to the beneficiaries. Between 2008 and 2013 the PT invested up to 90% of beneficiaries funds held as tabulated below.

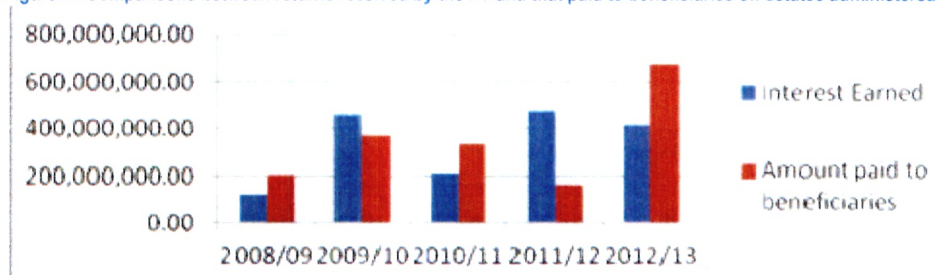
Table 10: Investments made by the PT from 2008 to 2013

Financial Year	Investments in Kshs				
	2008/09	2009/10	2010/11	2011/12	2012/13
Total beneficiaries funds held in all PT offices	3,841,886,946.00	4,687,326,062.00	5,219,307,607.00	5,807,231,794.34	6,785,626,141.00
Investments made in Deposits	150,000,000.00	150,000,000.00	150,000,000.00	145,000,000.00	145,000,000.00
Investments made in Treasury Bills	3,295,012,933.00	3,328,414,387.00	3,987,868,511.00	4,897,161,083.00	3,561,049,498.00
Total Funds Invested	3,445,012,933.00	3,478,414,387.00	4,137,868,511.00	5,042,161,083.00	3,706,049,498.00
% of funds held invested	90%	71%	79%	87%	55%

Source: PT accounts

Income earned from investments are placed in the PT's Investment Income Account and after due deductions have been made the balance is divided amongst all estates and trusts whose monies have been pooled together in an equitable manner. Analysis of PT consolidated accounts from 2007 to 2013 indicated that the PT received between Kshs 121,313,230.00 to Kshs 472,793,960.00 on investments made on beneficiaries funds in his possession. However what was eventually paid to the beneficiaries' estates was not consistent with returns received and ranged, between Kshs 163,671,237.00 and Kshs 679,928,399.00. According to the Administrator General Funds paid out to beneficiaries who includes principal amounts received and interest earned is only paid out on finalization of each estate, by which time and estate may have earned considerable interest.

Figure 4 : Comparisons between returns received by the PT and that paid to beneficiaries on estates administered



Source: OAG analysis of PT records

PT systems for service delivery is not efficient enough

4.08 The audit team administered audit questionnaires to establish the extent to which services offered by the Public Trustee met the expectations of their clients. Forty nine clients who had sought PT services during the time of the audit were questioned in PT's seven regional offices visited. Detailed responses are tabulated in Table 3 below. 83 % of the forty nine respondents felt that PT staffs were willing and ready to help customers in providing prompt and timely services. 65% stated that the PT form 1 required to be filled to initiate the process was not complicated and that they understood all the details required adequately. 61% acknowledged that PT staff explained to them the process required for administration and could call them anytime to know the progress of their files 69% of the respondents strongly acknowledged that the PT staff answered all their queries in a timely and courteous manner and offered good

customer service and that the PT processed payment of advances and school fees within the stipulated seven days and 77% of the respondents felt that the PT had credible officers.

Table 11. Responses to questionnaire to PT clients on customer satisfaction

Question	Number of respondents					Total	
	Strongly Disagree	Disagree	Neither agree nor disagree	Agree	Strongly Agree		
1	Procedures required to administer the estate were well explained to me	11	4	0	4	30	49
2	A time frame for the completion of services offered by the Public Trustee office was indicated	29	3	3	4	10	49
3	The forms I was required to fill (P.T Form 1..etc.) were not complicated and I understood all the details I was required to give	3	4	1	9	32	49
4	The Public Trustee Office fully explained fees and charges for the administration of the estate	26	5	1	3	14	49
5	The Public Trustee Office fully communicates the process and progress of the administration of the estate	10	6	1	2	30	49
6	My queries were answered in a timely and courteous manner	1	4	4	7	34	49
7	The Public Trustee Office has a timely process for payments of advances and school fees in the administration of estates and Trusts	7	2	24	5	11	49
8	I am satisfied with the time taken to complete the administration of the estate	20	3	4	6	16	49
9	I would recommend the services of PT to my colleagues, family and friends	13	1	2	9	24	49
10	The PT services are reliable	5	1	1	9	33	49
11	The Public Trustee Employees are willing and ready to help customers in providing prompt and timely services.	5	2	1	8	33	49
12	Does Public Trustee Office have credible officers who care about customer interest?	4	1	3	6	35	49
13	The Public Trustee office understands the needs of their customer.	3	2	2	10	32	49

4.09 An overwhelming 77% of the respondents also expressed dissatisfaction with the time taken to complete administration of estates. Some respondent had waited for over 10 years yet their files were still pending completion which caused them financial distress. 59% of the respondents were not aware of the stipulated time frames for the completion of services offered by the PT. Also 53% stated that the PT staff did not fully explain fees and other charges required for the administration of the estates. While 41 % felt administration took long than required. Thus only a mere 49% of the respondent said they would recommend the services of PT to colleagues, family and friends.

4.10 According to the Administrator General the reason why some cases take long to finalize leading to client dissatisfaction is because the function of administration estates and trusts by the Public Trustee is largely a legal process. There are numerous legal processes to be followed before an heir is paid .Additionally there are numerous crucial players which include courts and Deputy County Commissioners, Government Press, heirs, debtors, creditors, banks, insurance companies, Government Ministries among others, who must support and provide information at different stages. It is only after the due process has been completed that beneficiaries are paid their dues. Some estates are also beset by family disagreements, protracted court cases and uncooperative beneficiaries.

4.11 The audit found that PT systems for service delivery is not yet efficient enough since:

a) PT operational response to efficient service delivery is not yet satisfactory:

Information is very critical in decision making and accountability. The Administrator General has put in place systems to ensure that she receives quarterly updates on work done in all her offices. However, information received is not always used effectively to respond to the change needed or recommendations made. Issues raised were taking years to be resolved or remaining unresolved since no effective follow-ups or monitoring was being done. For instance during review of documents, the audit noted that the challenges of PT's BPMS, automation of operations has been continuously raised since 2010 yet they have both not been effectively addressed by 2014. Also the issue of ensuring that title documents are

readily available when required has been raised since 2008 yet during the time of the audit the auditors were not able to have access to review them since the keys could not be traced. As stated earlier the PT does always have timely, complete and credible information on how funds administered within her office to ensure that she is able to address the issues before annual accounts are submitted and ensure the financial statements don't contain significant errors and omissions.

- b) *PT is holding huge amounts of beneficiary funds*: Beneficiary funds held by the PT steadily rose from Kshs 3,841,886,946.00 in 2007 to Kshs 6,785,626,141.00 by 2013 as tabulated below:

Table 12: Total beneficiaries' funds held by the PT from 2007 to 2013

Financial Year	2008/09	2009/10	2010/11	2011/12	2012/13
Beneficiaries Funds held in all PT offices	3,841,886,946.00	4,887,326,062.00	5,219,307,607.00	5,807,231,794.34	6,785,626,141.00
Beneficiaries Funds held in PT H/Q's	1,436,463,783.00	1,704,450,441.00	1,771,827,330.00	1,947,710,604.00	2,428,040,756.00
% of funds held by PT headquarters	37%	35%	34%	34%	36%
% of funds held by PT regional offices	63%	65%	66%	66%	64%

Source: OAG analysis of documents provided by the PT

- The audit further noted that the increase in funds was steady in all PT offices. Administration of the deceased's estates is an elaborate and lengthy legal process of which the Public Trustee has no control. Beneficiaries can only be paid after the due process has been completed. Interviews and analysis conducted attributed the increase to delays in administration of estates, increased values of death gratuities and group accident claims, new clients being received, wrangles among heirs, unclaimed estates among other issues. Over the years, the PT has made efforts to request heirs of deceased persons, through the local newspapers, to come forth and contact PT offices so as to process payments due to them. However according to the PT staff the appeals gave rise to fraudsters trying to take advantage of the unclaimed estates thereby frustrating efforts of releasing funds held. In 2010 a PT legal officer was arranged in court for fraudulent claims he was alleged to have made in collusion with outsiders on a Kshs 3.3 million estate that had been dormant since 1999.

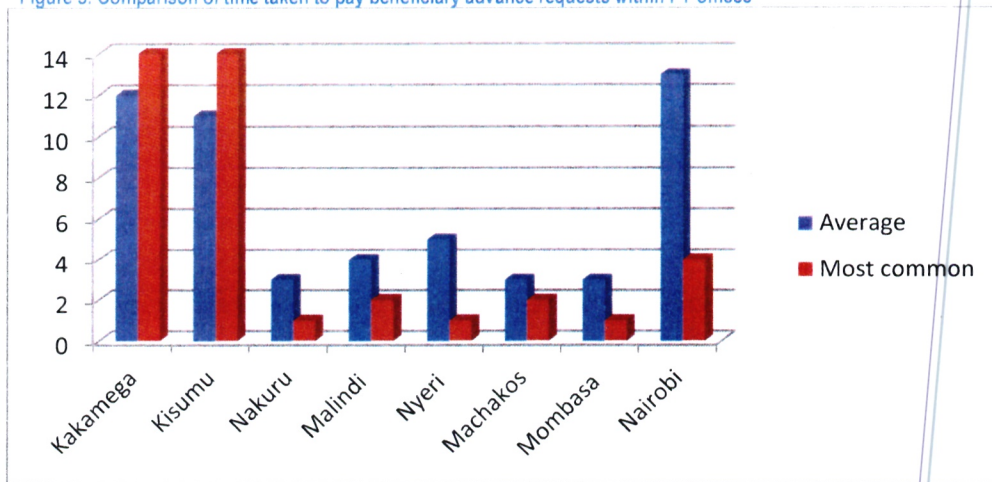
Table 13: Estates being administered by the PT in sampled regional offices

Fiscal Year	2008/09	2009/10	2010/11	2011/12	2012/13
PT Office	Estate Value of beneficiary funds estates (Kshs)	Estate Value of beneficiary funds estates (Kshs)	Estate Value of beneficiary funds estates (Kshs)	Estate Value of beneficiary funds estates (Kshs)	Estate Value of beneficiary funds estates (Kshs)
Nairobi	1,466,250,766.00	1,704,450,441.00	1,771,827,330.00	1,947,710,604.00	2,428,040,756.00
Mombasa	5580 240,595,182.00	6130 260,969,841.00	6161 292,826,256.00	6214 343,211,289.00	371002459.00
Malindi	534 17,024,868.00	596 28,316,632.00	618 34,282,758.00	634 40,038,607.00	50091741.00
Kakamega	9444 360,881,911.00	9909 491,923,671.00	10094 533,007,133.00	8955 574,238,386.00	736351461.00
Machakos	4811 253,292,195.00	5265 305,792,576.00	5569 332,142,783.00	368,012,580.00	417367318.00
Nyeri	2025 178,324,236.00	2114 234,224,138.00	2104 274,792,500.00	2233 364,882,386.00	414164527.00
Nakuru	4188 217,861,961.00	315,507,267.00	4823 338,051,971.00	361,474,074.00	431206957.00
Kisumu	9529 477,245,958.00	9719 605,701,082.00	9859 647,814,840.00	9311 781,715,220.00	776620877.00

Source: OAG analysis of documents provided by the PT

- c) **Payment of advances and school fees by the PT** : Public Trustee Act legislation No.23, allows the PT to make advances for the purpose of any estate under his administration out of any credit cash balance standing to the of the estate being administered. Once the advance request is made by the beneficiary, PT staff confirms estate's ledger balance and sends the request to the legal officer for authorization then to accounts for payment. Analysis of PT files indicated that beneficiary advances and fees were often paid within the seven days stipulated in PT's service charter time since by then the heirs had already submitted most of the required legal documents. PT offices in Kisumu and Kakamega often took fourteen days to pay advances and school fees, however the audit found a few extreme cases that took up to 43 days in Kisumu and 901 days in Kakamega to be paid. The delays were attributed to lack of Accountants to sign cheques, delay in advertising estates in the Kenya Gazette, the beneficiaries not availing fees structure or had petitioned for grants of letters of administration. At times the PT offices declined the beneficiaries request for advances when they had surpassed their mode of distribution share or when beneficiaries gave wrong names for the students or when genuine fees structures were not attached to the requests.

Figure 5: Comparison of time taken to pay beneficiary advance requests within PT offices



Source: OAG analysis PT files

- d) **Delay in discharging Civil Servant Group Accident Claim (CSGA)** : Where a civil servant or army personnel dies as a result of an accident, compensation through insurance under group accident policy is paid to their dependants. PT receives the claims from the National Treasury and is expected to remit the funds to the deceased dependents within thirty days at no charge upon receipt of requisite legal documents. The audit reviewed CSGA funds received by the PT from 2008 to 2012 and found that 75% were paid within PT stipulated time frame of thirty days. The remaining 25% took an average of 163 to 841 days to be discharged. The delay was due to delayed response to PT enquiries by deceased employers, district commissioners and beneficiaries not cooperating with each other and giving wrong information about the heirs
- e) **Delays in administering estates** : According to PT's service charter, summary discharge of estates valued below Kshs 500,000.00 should be completed within 7 days upon submission of the above required documents and cooperation by the customers. The audit analyzed PT estate files between 2008 to December 2013 measured the extent of delay from where the beneficiary remitted all the requisite documents to the date summary

certificate was issued and found that there were delays. The audit found that the most common cause for the delays was delays in drawing up final accounts and also despite summary certificates of discharge having been granted by the Administrator General, at times it was taking long for the staff to write letters indicating the same to the heirs and finalize the administration.

Table 14: Delays by PT offices in disbursing estates below Kshs 500,000.00

PT Regional Office	Sampled below 500,000.00	Estates Kshs	Estates found to have been finalised	Estates fully discharged within 7 days of clients bringing documents
Nairobi	54		21	21
Malindi	19		4	0
Kakamega	42		15	0
Machakos	11		4	0
Mombasa	24		9	0
Kisumu	16		2	2
Nakuru	25		10	0
Nyeri	33		14	0

Source: OAG analysis of PT files

- According to the Public Trustee's service charter; administration of estates valued above kshs.500, 000.00 should be distributed within ninety days upon submission of the required documents. The audit analyzed PT estate files between 2008 to December 2013 to measure the extent of delay in administration of estates. In PT's headquarters, only twelve of the forty seven estates sampled (25%) had been fully distributed by PT since 2008. There was also delay in administration in sampled regional offices of up to ten years. On average the PT regional offices took between nine months to five years to administer cases for amounts above Kshs.500, 000.00. Only five out of the ninety three sampled estates above Kshs. 500,000.00 in regional offices had the funds released for payment to the beneficiaries since 2008. Eighty eight estates for amounts above Kshs. 500,000 were pending completion and release of funds to the beneficiaries. In some instances ,beneficiaries had discharged and indemnified the PT however there was no formal communication to them again to pay and have the files had closed.
- f) **The PT faces property management challenges:** In the course of the administration of estates of deceased persons or Trusts, the PT is under statutory obligation to safeguard and maintain property left by the deceased or held in trust for the wellbeing of the beneficiaries. All property management in PT's regional offices is conducted in liaison with the property management at the head office. The PT manages the properties through his staff or through estate agents at a fee of 7.5% to 15% on rent collected. However at the time of the audit the PT did not have estate duty valuers or staff with property management skills and had not been able to maintain properties managed to the standards expected due to low rates and inconsistency in the rent collection. The amount collected was often insufficient for maintenance of the properties and for advances to the beneficiaries.

 - i. **Interviews held with the PT staff indicated they are faced with challenges** of :

 - Staff handling beneficiary properties were also involved in other clerical duties and were not developed in property management competencies
 - Security risks and threats when collecting rent from tenants thus seek police assistance
 - Lack of cooperation among beneficiaries frustrates transfer and management of properties
 - Efficient systems to ensure that all rental income collected is availed and accounted for

- Lack of an appropriate system for effective handing over to other staff when transferred
 - PT correspondences with beneficiaries since it is often through the postal address indicated which at times are outdated
 - The PT cannot increase property rent before getting a court verdict which is a lengthy process. As a result the rents stagnate at lower rates than the market value and is not beneficial to the beneficiaries
- ii. **Challenges the PT faces with the property agents:** Review of PT's property management agents monthly rental returns reports between 2009 and 2012 reflected that agents always collected less than expected leading to a buildup of dues. Rent collections also kept fluctuating every month and were not consistent since tenants declined to pay or were vacating houses without prior notice leading to accrued arrears and recovery efforts were frustrated since the rent tribunal court process took long to give verdicts. The PT further lacked adequate controls to ensure that rent collected is remitted immediately thus agents were often taking up to three months to remit. The low inconsistent rents coupled with agents' fees makes remaining rental balance shared among the beneficiaries very minimal. The PT has further not been able to maintain properties to the standards expected due to the low and inconsistent rent collections.
- g) **Inadequate handling of PT information :** The PT conduct is based largely on perpetual written records which have to be well preserved and produced when required. The audit found that some PT offices had inadequate security which risked the integrity of PT information. For instance in Kisumu, thugs broke in PT offices twice and took ten computers in 2012. Beneficiaries' information was lost since it was not backed up in a different location and had to be redone manually. At the time of the audit only four computers were being used among fifteen staff handling approximately 10,000 estate files which led to a high number of finalized estates pending payments for years as they for the final accounts to be typed. In addition, despite handling thousands of files in each of its office the PT has only ten records management officers out of twenty nine allocated in its budget among its twelve offices. PT also lacked adequate archive space in most of her offices. At times files and ledgers were not well kept to ensure the information therein is safe from the risk of fire, water and other elements. Poor information storage and record keeping practices increased PT's vulnerability to legal challenges and inefficiency in tackling issues as they arose.

Picture 1: Sample of PT ledgers found not maintained in proper condition



Source: OAG

Factors attributing to PT service delivery not being efficient

- 4.12 Generally the delay in administration of CSGA and estates by the PT was caused by:
- a. **Failure to do regular file reviews (bring ups).** Immediately a file is opened in any of the PT offices it is passed to the Assistant Public Trustee or any legal officer for perusal and determination of legal issues. Each file should be seen by a legal officer for perusal and comment at least once a month. The PT had no procedures to ensure adherence of

regular file reviews are done and acted on, which made administration of files stagnate and delays by the PT staff to initiate and do reminders when necessary to employers, Deputy County Commissioner and heirs

- b. **Employers delaying in giving correct feedback to PT queries.** Thus the PT has to write repeatedly to the deceased persons employer which caused undue delays
- c. **DC's submitting different lists of heirs.** Delays occurred as further investigations are done to arrive at the correct list before apportioning estate since the PT has to be cautious in discharging her functions
- d. **Grants obtained irregularly by heirs during handing over.** The PT has to point out such flaws and wait to assure that all heirs give their consent
- e. **Delay in advertisement of notice of claims on estates:** Once PT receives the list of heirs from the DC and heirs give their consent for PT to administer the estate, PT advertises the estate in line with Public Trustee Act Legislation No.12 (1). At times the adverts were taking long to be published. The delay was because PT has to wait for estates to accumulate and be published together for economies of scale, at times it was delays by staff, for instance the audit noted that despite heirs signing letters of consent as far back as December 2008 as at December 2013, being 5 years later the estate was yet to be advertised.
- f. **Delay by heirs to bring required legal documents and beneficiaries not cooperating:** failure by beneficiaries to have or bring required legal documents such as birth certificates and title documents, delay in signing PT documents and correctly identify all heirs. The PT uses post office address availed by former employers of deceased persons to contact heirs. Often employers don't require their staff to update their personal details and it becomes difficult for the PT to contact beneficiaries if outdated.
- g. **Difficulties in tracing heirs:** In the past the PT attempted to trace heirs through local newspapers but faced challenges when a multitude of fraudsters came forth in an attempt to take advantage of the situation. Correspondences with beneficiaries at times took too long to respond. Most of the beneficiaries don't make use of the postal addresses indicated or some are outdated and communication becomes a challenge
- h. **The beneficiaries not coming to collect their money of finalized estates.** Due to no proper address or address given outdated, one of the beneficiary pursuing the file passes or no one follows up. The audit noted that remote regions like Turkana and Samburu were the major areas with unclaimed finalized accounts.
- i. **Delays by National Treasury :** Analysis of cheque dispatch forms in PT estate files from 2008 to 2012 from Pensions department in National Treasury indicated that there was delay in remittances of death gratuity for administration to the PT. Audit analysis of Pensions statement of particulars claim for death gratuity, payment vouchers and payment forms for civil servants death gratuity received by the PT offices, reflected that it took an average of three years from the time of death of a civil servant for Pensions department to prepare death gratuity. However it was not evidently clear why some beneficiaries in Nairobi, Kisumu and Kakamega had to wait for up to 19 years for their death gratuities to be prepared by Pensions department as detailed below since we did not extend the audit to that department.

Table 15: Time taken from death to the time funds released from Pensions Department

PT Regional Office	Average Years	Minimum Years	Maximum Years	Most Common (Mode)
Nairobi	3	2 months	19	2
Mombasa	3	0.4	10	2
Kisumu	4	1	13	2
Kakamega	5	1	18	3
Nakuru	3	2	5	3
Nyeri	2	5 months	8	1
Malindi	3	1	5	2
Machakos	2	1	2	1
Mean Average	3	1	10	2

Source: OAG analysis of PT record

Further analysis indicated that the National Treasury took on average forty nine days, with a minimum of twenty three and up to one hundred and thirty eight days to remit funds to the PT after it was ready for disbursement at Pensions department.

Table 16: Days taken for funds disbursed from National Treasury to reach PT offices

PT Office	Average	Minimum	Maximum	Most Common (Mode)
Mombasa	59	34	83	58
Kisumu	47	27	69	37
Kakamega	60	6	67	37
Nakuru	40	25	40	35
Nyeri	43	30	71	39
Machakos	43	18	74	38
Average	49	23	67	41

Source: Analysis of PT records

Events that have taken place after the audit but before publishing the report

- 4.13 The audit noted the commitment made by the Administrator General to improve deficiencies brought to her attention on the audit. According to the Administrator General:
- a. Efforts are underway to complete the accounting modules in the system and thereafter, roll it out to the Regional offices. This is aimed at eventually offering Public Trustee services online. As of now, beneficiaries receive payments through m-pesa, thus saving them on cost and time. Beneficiaries can also be contacted or make enquiries about their files through office mobile phones
 - b. An accountant has been posted to Kisumu and Kakamega Public Trustee stations where services were slowed down as there were no accountants in the said stations.
 - c. Consultations with the Public Trustee Business Process Management System (PTBPMS) contractor are ongoing to ensure that all other modules of the system are completed after which the system will be rolled out to the regional offices.
 - d. Plans are under way to open additional PT offices in Kiambu, Narok and Marsabit counties by June 2015
 - e. The errors and omissions noted in the PT's Financial Statement for the Year 2011/2012 were rectified; hence do not feature in the 2014/15 Financial Statement
 - f. The issue of overdrawn beneficiary accounts continued to receive proper attention and the remaining overdrawn sum of Kshs. 6,170/= was to be cleared in the 2014/15 Financial Year
 - g. Efforts have been made to ensure that in cases where there are no disputes, estates are finalized within one year to avoid undue delays in administration of beneficiary estates
 - h. The Public Trustee has noted that the observation made by Auditors in Paragraph 9. Efforts will be made to ensure that any objectives which were not executed as per the Strategic Plan 2008-2013 will be addressed in the current Strategic Plan.

Chapter 5

Conclusions

- 5.1 As stated earlier both by the Public Trustee clients and observed during the audit, the Administrator General and her staff are very committed and dedicated at their work despite facing many challenges. However to fulfill the Public Trustee vision of being the best trustee in Kenya through service excellence systems the PT systems need to be enhance since they are still not adequate enough. PT clients interviewed had a lot of faith and trust in PT services and staff. However the respondents expressed concerns with time taken to administer the estates and inadequate knowledge on fees charged. Strategic planning in Government offices uses a lot of resources. It is not prudent to waste hard earned tax payers' funds preparing strategic and operational plans just to put them on shelves. The Public Trustee (PT) along with other Attorney General's departments have recognized their challenges and strategized how to overcome them in the Attorney General's year 2008 – 2013 strategic plans. However to establish credibility to its stakeholders it is crucial that the PT's office demonstrate that it is able to achieve intended results in the most prudent manner. Contrary to this the audit found that PT resources were not fully directed and controlled to ensure plans put in place were implemented which negatively continued to hamper service delivery.
- 5.2 The PT conduct is based largely on perpetual written records which have to be well preserved and produced when required. To be effective in fulfilling her mandate the Administrator General needs to regularly receive, have access to and use information from all her offices. Unfortunately financial information received and used to make decisions by the PT was not always accurate and complete as reflected in the Auditor General's annual financial reports and the performance audit findings on the PT's Business Processing Management System (BPMS). The audit team was particularly concerned on the fact that a PT staff member was able to override the BPMS controls and modify 762 estates without the knowledge of the PT since in 2010 one PT legal officer had been arraigned in court to court for attempting to falsify a Kshs 3.3 million dormant estate.
- 5.3 Administration of estates and trusts was found to be significantly better at the PT headquarters than in its regional offices. This could be attributed to the headquarters being comprised with people with the higher competencies and experience to fulfill their responsibilities. However, Kenyans should expect the same services in headquarters to be replicated in all PT offices. And this can easily be achieved by developing PT staff in the regional offices to enable them perform their assigned responsibilities more efficiently.

Chapter 6

Recommendations

The Public Trustee has not put in place adequate systems for administration of Estates, Trusts and Civil Servants Group Accident claims (CSGA). In view of the findings and conclusions of the audit, the Auditor-General, proposed the recommendations below for implementation by the Administrator General under the Attorney General's office: The Public Trustee acknowledges all the recommendations made in the report and promised to endeavor to use them in an effort to improve service delivery

To ensure the Business Processing Management System is working as intended;

- 1) Take appropriate remedial action required and engage in meaningful discussions with all involved to restore the BPMS within Kshs 2.5 million still held as retention
- 2) Put in place mechanisms to ensure that the BPMS is working as stipulated in the contract and achieves its intended objectives
- 3) Put adequate controls to ensure that PT's BPMS is secure and reliable
- 4) Train system users on the operations of the Business Processing Management System so that the staff can use and offer the necessary ICT support to users when required.
- 5) Develop an internal Service Level Agreements (SLA) that explains the expectations and responsibilities of the ICT staff and end users in terms of deliverables, contact persons, services available and the lead time in solving problems encountered.
- 6) Ensure adequate data migration procedures and a manual to direct and guide PT officers and system users on data entry at every stage and mechanisms to ensure they are adhered to

To make the PT service delivery more efficient to the public

- 7) Address conflicting roles of staff working in areas they have no training by building their capacity with the necessary trainings and guidance to perform better.

- 8) Put in place an mechanisms that ensure regular file reviews are done and acted on
- 9) Enhance interagency collaborations and work with other Government departments, counties and the media to avoid delays
- 10) Establish better terms of reference when engaging property management agents to ensure beneficiaries get proper dues from their properties

To ensure the Public Trustee achieves set plans

- 11) Relook at targets set in the just ended 2008 to 2013 Attorney General strategic plan aimed at improving the PT services and reasons for not achieving them. Lessons learnt from the review will prompt corrective action and coordination aimed at ensuring sustained management involvement in future strategic implementations.

To ensure the Public Trustee puts in place mechanisms for adequate accounting and reporting of its activities

- 12) Ensure proper record keeping, adequate authorization payment controls, adequate staffing levels and update ledger balances regularly
- 13) Develop a mechanism for effectively responding to challenges raised