

OFFICE OF THE AUDITOR-GENERAL



**SPECIAL AUDIT REPORT
OF THE AUDITOR-GENERAL
ON THE LAKE BASIN MALL COMPLEX IN
KISUMU UNDER LAKE BASIN DEVELOPMENT
AUTHORITY**

24 JANUARY 2017



ACRONYMS



LBDA- Lake Basin development Authority

LBM- Lake Basin Mall

EPL-Erdemann Property Limited

PPOA – Public Procurement Oversight Authority

MD – Managing Director

VOP-Variation of Prices(Additional Work Prices)

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1. EXECUTIVE SUMMARY

1.1 Introduction

Pursuant to the request by the Department Committee on Finance, Planning and Trade on 19 December 2016 vide letter Ref. NA/DCS/FPT/2017(1) dated 5 January 2017, my office has carried out a special audit on the construction of Lake Basin Mall Complex in Kisumu under Lake Basin Development Authority (LBDA). The special audit was conducted on 12 to 23 January 2017.

LBDA is one of the Six (6) Regional Development Authorities under the Ministry of Devolution and Planning as per the Executive Order No. 1 of May, 2016. The Authority was established in 1979 by an Act of Parliament, CAP 442. According to the Act, LBDA is empowered to plan and co-ordinate the implementation of development projects in the Lake Victoria catchment area. Further, in 2012, the LBDA initiated the process of setting up a shopping Mall and later a 3 star hotel, fence, tyre center, showroom and access road.

The LBDA Mall has a total built-up area of 59,870.80 sqm comprising a basement floor, ground floor, and mezzanine floor, first and second floors. It has also a parking for 325 cars at lower ground level and is designed to have all the social amenities for a modern shopping Mall. The showrooms have a total built-up area of 5042sqm comprising of mezzanine and the first floor. The 3-star hotel has a built-up area of 3084sqm comprising of ground, first, second, third, fourth and fifth floors while the tyre centre has a built-up area of 1875sqm.

1.2 Findings and Conclusion

- I. The LBM project is 98% complete as per certificate of practical completion issued on 19 April 2016. However the Mall has not been put into operation.

- II. The Quantity Surveyor states that the project cost is Kshs.4,138,895,104.89 based on final account.
- III. Report on rental income assessment done by Tysons Limited Marketing and Letting Agent estimates the Mall will generate at least Kshs.232, 633,704.00 per annum making the project viable.
- IV. The original contract signed on 8 April 2013 between LBDA and EPL was varied to Kshs.3,860,000,000 from Kshs.2,451,035,643 resulting to variation of Kshs.1,408,964,356 accounting for 57% of the original cost as result of additional works including 3 star hotel, tyre Centre, fence, showroom and an access road.
- V. EPL (borrower) agreed with LBDA to borrow Kshs.2, 500,000,000 at 16.5% interest from Co-operative Bank of Kenya towards construction of the LBM and charge the property of LBDA. The loan was charged on LBDA parcel of land LR.15239.The loan remained outstanding including principal amount of Kshs.2,500,000,000 and accrued interest of Kshs.388,089,757 bringing the total outstanding loan balance to Co-operative of Kshs.2,888,089,757 as at 23 January 2017.
- VI. The deed of variation was signed on 17 February 2015 while the Bills of Quantities for the variation was submitted on 20 April 2015.
- VII. National treasury and parent Ministry to put in place mechanism to ensure Co-operative Bank loan and Co-developer debts are repaid in full to avoid nugatory interest escalation.
- VIII. Payback period of the project is estimated at 15 years that is, by the year 2030, the initial investment will be fully recouped in line with Vision 2030.

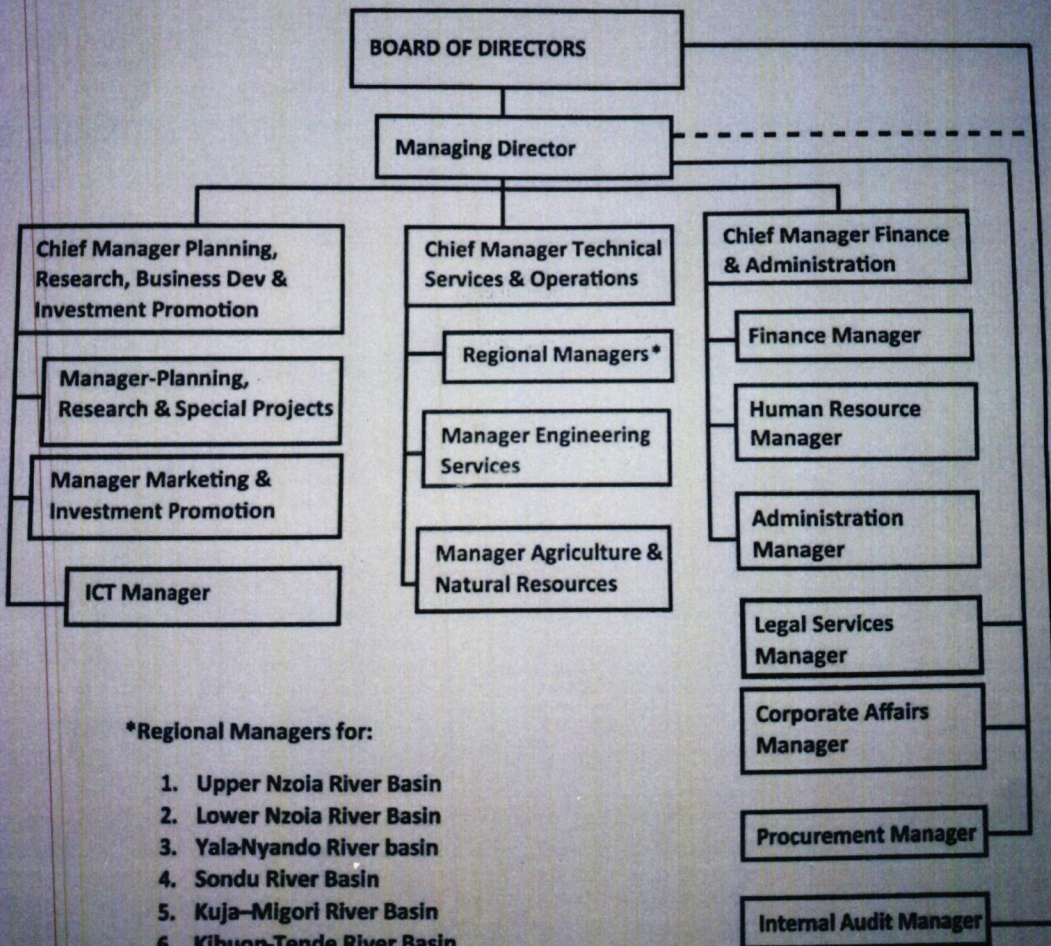
1.2.1 Governance Structure

Governance refers to the process and structures that direct and manage the affairs of the organization to enhance business propriety and corporate accountability, with the objective of realizing long term stakeholder value, while taking into account the interest of all stakeholders. It is underpinned by the principle of professionalism, integrity and accountability as stipulated in the Kenyan Constitution.



LAKE BASIN DEVELOPMENT AUTHORITY

ORGANISATION STRUCTURE



***Regional Managers for:**

1. Upper Nzoia River Basin
2. Lower Nzoia River Basin
3. Yala-Nyando River basin
4. Sondu River Basin
5. Kuja-Migori River Basin
6. Kibuon-Tende River Basin
7. Lake Shore Basin

Vision

1.2.1.1 Board of Directors

The LBDA Board consists of 24 Directors, twenty three of whom are Non-Executive Directors broken down as; one (1) Managing Director (MD), eight (8) Permanent Secretaries, three (3) Regional Commissioners, Inspector of State Corporations representative and eleven (11) members drawn from the Region. Whilst corporate governance places responsibility of the overall business strategy, financial, operational and compliance issues and policies on the Board, the Board has delegated authority to the managing director to conduct the day to day business of the Authority. Currently, the Authority has eighteen (18) directors serving in three subcommittees namely Finance and Establishment (F&E), Planning and Development (P&D), and Audit and Risk.

1.2.1.2 Management Structure

The structure provides for three divisions and four departments which support the MD.

- Engineering and Technical Services Division: The Division comprises of seven (7) Regions, Agriculture and Engineering, and Natural Resources Departments.
- Finance, Administration and Human Resource Division: The Division comprises of Finance & Accounts, Administration Services and Human Resources Departments.
- Planning, Research, Business Development and Investment Promotion Division: The Division comprises of Planning & Research and Business Development & Investment Promotion Departments. The Division also coordinates the Information Communication Technology Section.
- Four departments comprising of Legal Services, Internal Audit, Procurement and Corporate Affairs that report directly to the office of the MD.

1.2.1.3 LBM Pictorial Presentation

The project is complete based on certificate of practical completion issued on 19 April 2016. Below are pictorial presentations of the Mall.



Central Courtyard- Showrooms to the Right



Central Courtyard- Showrooms to the Left



Mall Entrance – Red Canopy



3-Star Hotel Front

1.3 Procurement and Project Funding

The project was procured through open tender using expression for interest method advertised on 12 January 2013 with an addendum dated 21 January 2013 and closed on 11 February 2013.

Technical valuation was conducted on 27 and 29 February 2013 and observed that Erdemann Property Limited met mandatory preliminary and was proposed for financial proposal opening.

The valuation committee recommended Erdemann Property Limited as the lowest responsive construction cost.

During the construction work, further additional works including a three star hotel and a tyre centre, a showroom, boundary wall and an access road were introduced resulting to a variation of original contract from Kshs.2,451,035,643 to Kshs.3,860,000,000 accounting for 57.5% of original contract. This variation was not tendered for or approved by the tender committee and PPOA.

1.4 Challenges and Recommendations


Challenges

- Debt resulting from Cooperative Bank loan amounting to Kshs.2,500,000,000 and interest related amount to Kshs.388, 089,757 as at 20 January 2017. This loan borrowed by EPL was charged on LBDA title. Further, the pending bills to EPL totaled to Kshs.1,671,097,690 as on 22 January 2017. The total debts of Kshs.4,559,187,447 (inclusive of normal interest and interest on delayed payment) thereby creating a risk of the Mall being auctioned.
- The Mall is not yet operational despite the certificate of practical completion having been issued on 19th April 2016 resulting to loss of revenue.
- Failure by National Government to disburse budgetary allocation and dwindling allocation on development budget to LBDA makes it hard for LBDA to meet its financial obligation.

- Failure by management to make key decisions on time including failure to put the Mall into operation and opening of escrow account
- The inadequate recurrent and development expenditure funding from the National Government together with low performance of local revenue source, leading to breach of contract for failing to pay its obligation on time.
- High turnover of chief officers including the Board members as a result of frequent management changes leading to delay in decision making pertaining to the project.
- Continued delay in opening the Mall will create undue discontent among potential investors and other stake holders.

Recommendations

- I. The National Treasury and Parent Ministry to should ensure that the Co-operative Bank loan and Co-developer dues are repaid in full as soon as possible.
- II. Treasury should release budgetary allocations to LBDA to enable it meet its financial obligations including pending bills to the contractor and the bank.
- III. LBDA Board should ensure that the Mall is put into immediate use to arrest continuing loss of revenue.
- IV. The construction of the Kisumu-Kakamega road interchange should be speeded up to ensure to access the Mall as soon possible.
- v. LBDA Board should create a managing committee that will advise on the efficient management of the Mall as well as ensuring timely decisions affecting its operations.



FCPA Edward R. O. Ouko, CBS
AUDITOR-GENERAL

NAIROBI

24 January 2017

2. DETAILED REPORT

2.1 Introduction

LBDA is one of the Six (6) Regional Development Authorities under the Ministry of Devolution and Planning as per the Executive Order No 1 of May, 2016. The Authority was established in 1979 by an Act of Parliament, CAP 442. According to the Act, LBDA is empowered to plan and co-ordinate the implementation of development projects in the Lake Victoria catchment area. Further, in 2012, the LBDA initiated the process of setting up a Shopping Mall and later on a 3 star hotel, fence, tyre centre and showroom, and access road.

The LBDA Mall has a total built-up area of 59,870.80 sqm comprising a basement floor, ground floor, mezzanine floor, first and second floors. It has a parking for 325 cars at lower ground level and is designed to have all the social amenities for a modern shopping Mall. The showrooms have a total built-up area of 5042sqm comprising of mezzanine and the first floor. The 3-star hotel has a built-up area of 3084sqm comprising of ground, first, second, third, fourth and fifth floors. The tyre centre has a built-up area of 1875sqm.

2.2 Terms of References

Our terms of reference were:

- Reviewing project formulation, implementation procedures and status
- Assess whether the project's procurement procedures are in compliance with the law and regulations in place.
- Reviewing all the contract and lease agreements.
- Interview key management in LBDA, contractor Erdemann Property Ltd, Quantity Surveyor (Quantech), Lead Architect (Symbion Consultant), Tyson Ltd, Representative of Co-operative Bank, former and current managing director.
- To establish the project's value for money to the public.
- Determine challenges facing the implementation of the project.

- Determine possible measures to be undertaken to mitigate the problems or challenges facing the Authority as a result of the project.
- Issue a report including recommendations.

2.3 Methodology

The approach used in carrying out this special audit included the following:

- Review of applicable legislation and regulations.
- Examination of payment vouchers, cashbooks, budgets, bank statements, procurement documents, and other related records.
- Review of minutes of various board meetings where there were resolutions regarding construction of the Mall.
- Physical inspection and verifications of the project
- Interviews with key officers and stakeholders in LBDA.
- Observation of processes and activities.
- Review of documents used by management to monitor the projects.

3. Detailed Findings

3.1 The Lake Basin Mall (LBM) Project

The LBDA Headquarters and Staff Housing Project was conceived in 1982. The construction contract was awarded to M/s N.K Brothers Ltd by the then Ministry of Regional Development in October 1990. However, due to lack of funds and delays in payments of various certificates, the works stalled in 1992.

After several requests to the government to complete the project, the Ministry of Public Works wrote letter vide ref: BD46/7491A/90 dated 19th December 2008. The letter informed the Ministry of Regional Development that the government could not fund completion of the project as it was not listed under the programme for government stalled projects. LBDA was therefore advised to seek alternative funding arrangements.

Finally through open tender LBDA was able to obtain a Co-developer (Erdemann Property Ltd) for the construction of the Mall.

3.2 LBM Feasibility Study

Due to changing market trends, LBDA decided to conduct a feasibility study in 2012. The study was to establish the financial, economic, social, technical and environmental viability of developing the HQs complex, industrial and residential properties. The consultants led by Symbion (K) Ltd submitted their report showing proposed developments for all LBDA plots. The master design for the 23 acres Lower Kanyakwar land parcel No. LR.15239 identified the need for a mixed use development comprising shopping Mall, showrooms, offices, apartments, hotel and recreation area. After discussions, the LBDA management recommended that the LBM and showrooms on Lower Kanyakwar plot be prioritized for implementation. This proposal was approved by the Board of Directors and the Permanent Secretary at the Ministry of Regional Development Authorities.

On December 2012, Symbion (K) Ltd without competitive bidding was allowed to document and supervised the construction of the Mall at the overall cost of Kshs.171,779,323.

3.3 LBM Contract Agreements

The LBDA tender committee awarded the contract to Erdemann Property Limited (EPL) at a cost of Kshs.2,451,035,644 and the following agreement drawn:

(a) Form of Agreement,

This is the initial agreement for construction of the works between LBDA and Erdemann Property Ltd signed on 8 April 2013. It describes the agreement as lump-sum fixed-price contract for Kshs.2, 451,035,644. LBDA is supposed to make advance payment of Kshs.490, 207,128.60 being 20% of the contract sum to EPL (Co-developer).

(b) Agreement for a loan to be secured by the exercise of a power of charging,

This agreement between LBDA and EPL signed on 8 May 2013 and requires LBDA to execute in favor of EPL, or any financial institution selected by EPL, a legal charge over LR No. 15239. This is the Lower Kanyakwar Land parcel where the LBDA HQs and the LBM complex are situated.

(c) Escrow Agreement,

This agreement between LBDA and Erdemann Property Ltd signed on 11 November 2016 and requires LBDA to open an Escrow Account at Development Bank of Kenya. The account is to be used for depositing sale or rental income from the LBM. Money deposited would be used to pay the liabilities owed to EPL.

(d) Deed of assignment of Rental Income,

This agreement between LBDA and EPL signed on 17 February 2015 and requires LBDA to execute in favor of EPL, all rental income from the LBM as security for payment of the bid price or any amount thereof for the time being due and payable to EPL.

3.4 LBM Project Status

Symbion (K) Ltd who are the project consultant vide letter of Job ref SK/13/2252 issued certificate of practical completion and takeover on 19 April 2016. In view of the issuance of practical completion certificate & takeover, EPL notified of their willingness to hand over the entire project to LBDA from July 2016. EPL has been reminding LBDA to take over the project having fulfilled their commitment to the project stressing that the retention period was over and has completed making good the major defects to the project.

The County Government of Kisumu vide letter CK/CP/4/2016 (01/04/16) of 25 April 2016 also issued occupation permit after inspection of the premises to be occupied for the purposes for which they were designed.

Considering retention period lapse, the amount owed to EPL amounted to Kshs.1,110,866,335.45 plus retention of Kshs.159,231,354.44 which total to Kshs.1,270,097,690.89 as on 9 January 2017. Further, arising from the interview with the contractor and review of records, the contractor's further outstanding claimable costs as at 9 January, 2017 amount to Kshs.401,000,000 representing interest on delayed payments.

Failure to put into use completed project has resulted to loss of revenue amounting to approximately Kshs.200,000,000 in the year 2016, being the opportunity cost lost resulting from idle space. Therefore letting revenue and other social economic benefits are being forfeited.

3.5 Final Account

The Quantity Surveyor on 10 May 2016 shows that the project cost is Kshs.4,138,895,104.89 as shown in table 1 below:

Table 1: Final Account Analysis

Item	Kshs.
Construction Cost	3,184,627,088.71
Finance Cost	550,679,245.00
Dev. Management Fee	265,896,935.00
Professional (Consultant)Fees	207,291,837.00
Total	4,208,495,105.71
Discount	69,600,000.82
Final Account Total	4,138,895,104.00

Audit review of the final account established unanalyzed costs including the finance cost Kshs.550, 679,245 and development management fee Kshs.265,896,935. Audit also revealed that the deed of variation contract sums was Kshs.3,860,000,000 and not Kshs.4,138,895 as shown in the final account in Table 1 above. However interview of the Co-developer revealed that the difference of Kshs.278,895,104 was comprised of contract interest payment on behalf of LBDA.

3.5.1 Liabilities Relating To Electrical Works for LBM Project

Review of records reveal that Contemporary Electricals Enterprises Ltd was sub-contracted to undertake installation of Electrical works and associated services at a revised final cost of Kshs.224,181,556 to the full extent of work carried out. Erdemann Property Ltd made payments amounting to Kshs.107,290,234 directly to suppliers of electrical materials resulting into an outstanding balance of Kshs.116,891,322 payable to Contemporary Electricals Enterprises Ltd. The final accounts were signed by the Consulting Engineers M/s Feradon Associates and the sub-contractor for electrical works (Contemporary Ltd). However, it was observed that Erdemann Property Ltd has not honoured the contractual obligation with the Contemporary Ltd despite the electrical works executed inclusion in the revised final account. Further, the electrical works has not tested, commission and certified to date as confirmed by Ministry of Transport, Infrastructure, Housing & Urban Development letter vide letter ref: PW/A/200/109 dated 23 December,2016.

3.5.2 LBM Revenue Projections

Report on rental income assessment done by Tysons Limited Marketing and Letting Agent programmed that the shopping Mall including; tyre center and the hotel, once 100% operational, are projected to generate the following revenues for a period of six (6) years as shown in Table 2. Further, the marketing and letting agent has already signed tenant contracts with a number of clients including the anchor tenant (Tusky Supermarkets), Kuku Pride, Duri Enterprise and Communication Commission of Kenya.

Table 2 Projections from Tysons Ltd Letting Agent

Period	Monthly Rent Kshs.	Annual rent Kshs.
2016	19,386,142.00	232,633,704.00
2017	20,307,966.00	243,695,592.00
2018	21,274,657.00	255,295,884.00
2019	22,308,422.00	267,701,064.00
2020	23,371,575.00	280,458,900.00
2021	24,486,545.00	293,838,540.00

Source: Projections from Tysons Limited Letting Agent

3.6 Escrow and Service Charge Accounts

The LBDA and EPL obtained an approval to open both service charge and escrow accounts from the office of the Attorney General and Department of Justice, Parent Ministry and National Treasury on 19 December 2016 and 4 January 2017 respectively. Both escrow account and service charge accounts were opened in Cooperative Bank of Kenya based. The authority to open and operate an escrow account and service charge bank accounts the sanction by National Treasury on 4 January 2017.

3.7 Additional Works and Deed of Variations

Erdemann Property Limited was awarded contract to construct a shopping Mall at initial cost of Kshs.2,451,035,644 through tender committee Minutes dated 14 March 2013. During a Special Board meetings held on 18 and 19 December 2014. The board approved Kshs.620, 000,000 as additional costs for the Mall. The Board also another

approved Kshs.680,000,000 for new works. These additional works involved construction of the showroom, 3-Star Hotel and Tyre Centre. Subsequently, a deed of variation of form of agreement dated 17 February 2015 was signed in Nairobi between LBDA and EPL. This varied the bid price to Kshs.3,860,000,000 from Kshs.2,451,035,643 resulting to variation of Kshs.1,408,964,356 accounting for 57% of the original cost. However, the variations for additional works were not approved by tender committee.

3.8 Co-operative Bank Loan

Audit review revealed that failure by LBDA to pay Kshs.130, 000,000 out Kshs.490,000,000 being part of the 20% initial contribution, LBDA called for renegotiation of the arrangement. Subsequently, LBDA agreed with EPL (borrower) to borrow Kshs.2,500,000,000 at 16.5% interest from Co-operative Bank of Kenya towards construction of the LBM and to charge the property of LBDA. The loan was charged on LBDA parcel of land LR 15239. The loan including the principal and interests amounts to Kshs.2,888,089,757 (Table 3) still remains outstanding as at 20 January 2017. Failure to repay the loan has resulted the interest accruing and increasing the risk of the property being attached.

Table 3: Loan Analysis

Date for charge	Board Approval date	Amount (Kshs.)
13 March 2014	25 March 2013	1,200,000,000
19 January 2015	18&19 December 2014	620,000,000
Final Consolidated Charge- 11 June 2015	18&19 December 2014	680,000,000
Total		2,500,000,000
Interest as at 20 January,2017		388,089,757
Grand total		2,888,089,757

Source: Bank interview and source documents

We note that, the Authority did not expressly seek the approval to charge the land from Cabinet Secretary. However, the Parent Ministry and National Treasury were represented in board of the Authority when the decision was taken. Also, the loan was separately guaranteed by Erdemann Property(K) ltd (Guarantor).

4. Budgetary Allocation and Disbursements from the National Treasury

Since 2013, LBDA has been requesting for Mall Project funds from the exchequer through the normal budgeting process. The table 4 below highlights the amounts requested and the corresponding allocations and disbursements from the exchequer. The analysis show consistent decline in budgetary allocation and disbursements from treasury.

Table 4: Budget and Disbursements

Financial Year	Budgetary Request (Kshs)	GoK Printed Estimates (Kshs)	LBDA Budget (Kshs)	GoK Disbursement (Kshs)
2011-2012	2,700,000,000	180,000,000	180,000,000	180,000,000
2012-2013	3,000,000,000	200,000,000	200,000,000	155,000,000
2013-2014	5,123,001,062	155,000,000	155,000,000	116,250,000
2014-2015	5,123,001,062	0	54,200,000	0
2015-2016	1,000,000,000	90,992,500	90,992,500	43,000,000
2016-2017	1,500,000,000		1,500,000,000	

Source: Approved LBDA Budgets Analysis

5. Specific Prior Years Audit Matters

Review of prior Auditor-General reports indicates that LBDA received various qualifications on aspects of going concern and shopping Mall progress. The audit opinion for the financial year ended 30 June 2015 revealed the following issues, which to a varied extent were existent in the years 2014 and 2013.

Audit Opinion

i) Going Concern

The Authority's financial performance continued to deteriorate during the year as it incurred a deficit of Kshs.79,998,482 (2013/14 – Kshs.125,191,871) which brought its accumulated surplus to Kshs.161,855,334 (2013/14 – Kshs.241,853,816). The statement of financial position also reflects a negative working capital of Kshs.2,191,282,984. Evidently, the Authority is technically insolvent and its continued operation as a going concern is dependent upon the continued support from the Government, trade payables and its bankers.

ii) Land Ownership Documents

The Authority's property, plant and equipment balance of Kshs.3,289,923,541 as at 30 June 2015 includes eighteen (18) parcels of land valued at Kshs.39,174,333, whose ownership documents were not made available for audit review. In addition a parcel of land and building valued at Kshs.1,800,000 and Kshs.4,000,000 respectively, had been transferred and registered in the name of a former employee in unexplained circumstances.

iii) Work in Progress

Included in the work in progress figure of Kshs.2,823,441,433 as at 30 June 2015 are work in progress Kshs.2,240,119,617 in respect of construction and development of the shopping Mall undertaken jointly between LBDA and a property developer at a contract sum of Kshs.2,451,035,644. Scrutiny of the contract agreement revealed that Lake Basin was to pay Kshs.490,207,129 under phase one within a period of six (6) months after the signing of the contract agreement on 8 April, 2013. However, the Authority had only paid Kshs.359,500,000 as at 30 June 2015 leaving an unpaid balance of Kshs.130,707,129, and thus the Authority is in breach of that contract agreement.

iv) Variation of Contracts for Construction of Shopping Mall

The Authority and a private property developer entered into the contract on 8 May 2013 to construct Lake Basin Mall at contract sum of Kshs.2,451,035,643. However, the contract was varied on 17 February 2015 from the original contract sum of Kshs.2,451,035,643 to Kshs.3,860,000,000 amounting to a variation of Kshs.1,408,964,357- (57% variation), which is contrary to the Public Procurement and Disposal Regulations (amendment 2013) that allows variation to a maximum of 25%. Thus the Authority is in breach of the law.

6. The Overall Cost of LBM Project

The cost to the project excluding interest is detail as below:

	Kshs.
Project cost as per Final Account	4,138,895,104.89
Advance payment (partial payment of 20%)	(368,797,414)
Total Outstanding Amount	3,770,097,690

The outstanding amount is broken down as detailed below:

Co-operative Bank Loan –Principal Amount	2,500,000,000
Co-developer	1,270,097,690

Additional Disputed Claims

- I. Additional Interest Incurred of Kshs.240,000,000 claimed by the contractor for breach of contract by LBDA in the default of the Kshs.490,207,129 being 20% of the co-funding.
- II. Interest Incurred of Kshs.161,000,000 claimed by the contractor for breach of contract by LBDA in the default of the Kshs.1,270,097,690 being the total

amount of the contractor contribution (payment to the bank) to the projects with effect from 16 November, 2015 when certificate of completion was issued.

- III. The Interest incurred of Kshs.388, 089,757 demanded by the Co-operative Bank towards the default in servicing the loan to 20 January 2017.
- IV. The sub-contractor M/s Contemporary Electrical Enterprises Ltd demanding Kshs.116,891,322 which has not been honored by Erdemann Property Ltd which the contractor through interview acknowledged the debt.

7. LBM Project Viability

- I. Based on expected revenue from rental income estimated to be Kshs.230,000,000 per annum subject to yearly increase of 5%, and other social economic benefits, the project is viable. The payback period will be 15 years.
- II. The LBM complex is landmark in line with LBDA mandate as enshrined in the act creating the Authority Cap 442 which empowers the Authority to carry out integrated sustainable developments.
- III. The Mall is a landmark national asset which will improve the economic development in the lake basin region in line with vision 2030.
- IV. In addition, the project will address the social economic benefits such as employment creation, tourism promotion and elevation of lake basin region as an investment hub.

8. Challenges

- I. Debt resulting from Co-operative Bank loan amounting to Kshs.2,500,000,000 Billion and interest amounting to Kshs.388,089,757 borrowed by EPL is charged on LBDA title and LBDA is fully responsible after completion of the project. In addition LBDA owes the contractor Kshs.1,270,097,690. The loan and pending bills to the contractor remain outstanding and interest accruing puts the Mall and land of LBDA at risk of being auctioned.
- II. The Mall is not operational despite the certificate of practical completion having been issued on 19 April 2016 and contractor agreeing to hand over the property

to LBDA. The Mall has remained idle despite indication of interest from a number of clients including Tuskys as an anchor tenant, resulting to loss of revenue rental income amounting to Kshs.232, 633,704 per annum beside the respective taxes and rates to the Government.

- III. Failure by National Government to disburse budgetary allocation and dwindling allocation on development budget to LBDA made it hard for Authority to meet its contractual obligation that led to borrowing from commercial banks. For instance Kshs.1, 000,000,000 budgeted for in 2015/2016 but not disbursed and Kshs.1, 500,000,000 for the year 2016/2017 is also not yet disbursed at all.
- IV. Management problems that is, failure by management to make key decisions on time including failure to put the Mall into operation after certificate of practical completion issued on April 19th 2016, and also failure to obtain approval from relevant ministries to open escrow account on time that has resulted to loss of revenue.
- V. Frequent change of leadership at the level of Permanent Secretaries and line Ministries experienced by the Authority impacts negatively on LBDA and since inception of the project in 2013, LBDA has experienced changes in respect of three (3) Permanent Secretaries, four (4) different Chairpersons, four different Managing Directors (including acting ones) and totally new Board of Directors in a period of three years.
- VI. Final account certificate and certificate of making good defects, are both still pending to date

9. Recommendations

- I. The National Treasury should ensure that the Cooperative Bank loan is repaid in full as soon as possible to avoid title of the Mall and LBDA being auctioned. Further, the Government should negotiate with Co-operative Bank with a view of reducing current interest rate of 14% charged on the loan towards construction of the Mall.

- II. Treasury should release budgetary allocations to LBDA to enable it meet financial obligations including pending bills to the contractor. Time is of essence in the repayment of the loan as interest continue to accrue at the rate of at least Kshs.30,000,000 per month.
- III. LBDA Board should ensure that the Mall is put into immediate use to arrest the continuing loss of revenue. Further the management should put mechanisms in place to ensure that the Mall is well marketed to ensure maximum revenue is generated from the property.
- IV. The Board and management should ensure that all sub-contractors pending bills are paid before releasing all the monies to the Co-developer.
- V. It is therefore recommended that upon receipt of funding for the LBDA Mall from the National Government, priority be given to settlement of outstanding balance for the bank, the sub-contractors, and the net be paid to Erdemann Property Ltd.
- VI. The Authority Board should create a managing committee that will advise on efficient management of the Mall as well as ensuring timely decisions affecting its operations.

List of Tables

Table 1: Final Account Analysis

Table 2 Projections from Tysons Ltd Letting Agent

Table 3: Loan Analysis

Table 4: Budget and Disbursements

Annexes

Annex I: Additional works and Deed of Variations

ITEM	Tender BoQ Kshs.	Negotiated Contract Price Kshs.	Projected Contract Price(VOP) Kshs.
Preliminaries	90,000,000.00	90,000,000.00	324,980,647.00
Demolitions	1,450,000.00	1,450,000.00	41,450,000.00
Shopping Mall	1,040,443,037.48	1,040,443,037.48	1,330,522,275.79
Specialized Works	10,401,186.40	10,401,186.40	11,123,876.00
External Works	100,110,778.20	100,110,778.20	111,869,245.25
PC & PS sums Services & other Works	317,987,146.00	317,987,146.00	347,536,946.00
Design Contingency	92,800,000.00	92,800,000.00	40,000,000.00
Fluctuations	92,800,000.00	92,800,000.00	-
Total	1,945,992,148.08	1,945,992,148.08	2,207,482,990.04
Less Discount		69,600,001.00	
Expected Discount			78,952,434.84
Total	1,945,992,148.08	1,876,392,147.08	2,207,482,990.04
3 Star Hotel	-	-	314,074,558.58
Showroom	-	-	191,960,546.42
Back access Rd	-	-	17,832,308.80
Tyrecentre	-	-	82,427,354.46
Boundary Wall	-	-	49,936,190.98
Abortive Works	-	-	2,218,602.00
Sub Total	-	-	658,449,561.24
Expected Discount	-	-	23,546,987.17
Total	1,945,992,148.68	1,876,392,147.00	2,865,932,551.28
Financial Cost	389,000,000.00	350,100,000.00	550,679,245.36
Management Cost	155,679,371.00	124,543,496.00	265,896,935.14
Professional Fees	-	100,000,000.00	207,291,836.68
Total	2,490,671,519.68	2,451,035,643.00	3,889,800,568.46
Less Discount			26,881,062.46
Approved Contract	2,490,671,519.68	2,451,035,643.00	3,862,919,506.00

Annex 2

Final Account

We here below give a comparison between Tender Bills of Quantities (C1), Negotiated Contract Price (C2) and Projected Contract Price (C3)					
	C1	C2	C3	C4	
ITEM	Tender BoQ	Negotiated Contract Price	Projected Contract Price	Change = (C3 - C2)	Final Account
	Kshs.	Kshs.	Kshs.	Kshs.	Kshs.
Contract Sum					2,451,035,643.00
Preliminaries	290,000,000.00	290,000,000.00	324,980,647.00	34,980,647.00	267,440,088.00
Demolitions	1,450,000.00	1,450,000.00	41,450,000.00	40,000,000.00	1,450,000.00
Shopping Mall	1,040,443,037.48	1,040,443,037.48	1,330,522,275.79	290,079,238.31	1,256,464,946.00
Specialized Works	10,401,186.40	10,401,186.40	11,123,876.00	722,689.60	5,373,811.00
External Works	100,110,778.20	100,110,778.20	111,869,245.25	11,758,467.05	233,750,799.00
PC & PS sums Services & other Works	317,987,146.00	317,987,146.00	347,536,946.00	29,549,800.00	341,152,543.00
Design Contingency	92,800,000.00	92,800,000.00	40,000,000.00	(52,800,000.00)	
Fluctuations	92,800,000.00	92,800,000.00	-	(92,800,000.00)	92,800,000.00
Additional Works					1,018,531,062.00
Total	1,945,992,148.08	1,945,992,148.08	2,207,482,990.04	261,490,841.96	5,667,998,892.00
Less Discount		69,600,001.00		-	
Expected Discount			78,952,434.84		
Total	1,945,992,148.08	1,876,392,147.08	2,207,482,990.04	331,090,843.04	
3 Star Hotel	-	-	314,074,558.58	314,074,558.58	
Showroom	-	-	191,960,546.42	191,960,546.42	
Back access Rd	-	-	17,832,308.80	17,832,308.80	

Tyre centre	-	-	82,427,354.46	82,427,354.46	
Boundary Wall	-	-	49,936,190.98	49,936,190.98	
Abortive Works	-	-	2,218,602.00	2,218,602.00	
Sub Total	-	-	658,449,561.24	658,449,561.24	
Expected Discount	-	-	23,546,987.17	-	
Total	1,945,992,148.68	1,876,392,147.00	2,865,932,551.28	989,540,404.28	
Financial Cost	389,000,000.00	350,100,000.00	550,679,245.36	200,579,245.36	550,679,245.00
Management Cost	155,679,371.00	124,543,496.00	265,896,935.14	141,353,439.14	
Professional Fees	-	100,000,000.00	207,291,836.68	107,291,836.68	207,291,837.00
Development management fees					265,896,935.00
Total	2,490,671,519.68	2,451,035,643.00	3,889,800,568.46	1,438,764,925.46	6,691,866,909.00
Less Discount			26,881,062.46		2,552,971,804.00
APPROVED CONTRACT	2,490,671,519.68	2,451,035,643.00	3,862,919,506.00		4,138,895,105.00

Annex 3

PAYBACK PERIOD

Year	Financial Year	Annual Rent Kshs.	Cumulative Gross Rent Kshs.
1	2017	243,695,592.00	243,695,592
2	2018	255,295,884.00	498,991,476
3	2019	267,701,064.00	766,692,540
4	2020	280,458,900.00	1,047,151,440
5	2021	293,838,540.00	1,340,989,980
6	2022	308,551,467.00	1,649,541,447
7	2023	323,979,040.00	1,973,520,487
8	2024	340,177,924.00	2,313,698,411
9	2025	357,185,892.00	2,670,884,303
10	2026	375,046,236.00	3,045,930,539
11	2027	393,798,548.00	3,439,729,087
12	2028	413,488,475.00	3,853,217,562
13	2029	434,262,899.00	4,287,480,461
14	2030	455,871,044.00	4,743,351,505
	PAYBACK PERIOD =	14 Years 6 Months	

Annex 4 LBDA Contribution towards the Mall

Date	Amount (Kshs.)	Remarks
17 April 2013	207,000,000.00	Paid to Erdemann Property Ltd
17 April 2013	53,000,000.00	Paid to Erdemann Property Ltd
11 November 2013	50,000,000.00	Paid to Erdemann Property Ltd
15 July 2014	25,000,000.00	Paid to Erdemann Property Ltd
14 April 2015	12,000,000.00	Paid to Erdemann Property Ltd
11 May 2015	12,500,000.00	Paid to Erdemann Property Ltd
29 June 2016	9,297,414.00	3% Withholding Tax paid to KRA
Total	Kshs.368,797,414.00	

Stamp: KRA
Stamp: 8/10/16
Stamp: KRA SYSTEM

Stamp: RECEIVED
Stamp: 10/10/16
Stamp: KRA