

2021

30th January 2023

CHAIRMAN'S BRIEF

**TO THE COUNTY PUBLIC ACCOUNTS AND INVESTMENT COMMITTEE OF PARLIAMENT
ON THE REPORT OF THE AUDITOR GENERAL
ON THE FINANCIAL STATEMENTS OF BUNGOMA COUNTY ASSEMBLY CAR LOAN AND MORTGAGE FUND
FOR THE PERIOD 1 JULY 2018 TO 30 JUNE 2019**

Legal status

The Assembly is established under

1. The Constitution of Kenya 2010

Chapter eleven—devolved government

"Sections 176 & 177 Establishes the County Assembly as an integral part of a county government"

2. County Government Act 2012

Section 7 on membership of **the county assembly**, section 8 on the role of the assembly and led by the speaker to the assembly

Section 12 **The county assembly service board** responsible for providing services and facilities to ensure the efficient and effective functioning of the county assembly led by the Clerk to the County Assembly

Key Issue	Root Causes	Effect/ Consequences Management	Officer Responsible	Auditor-General's Recommendations	Status: Resolved/ Unresolved Possible Questions Committee
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REPORT ON THE FINANCIAL STATEMENTS

Basis for qualification (has issues)

1 Accuracy of the Financial Statements

<p>The statement of financial performance reflects total expenses balance of Kshs 526,868. However, the statement of Comparison of Budget and Actual Amounts reflects Kshs 355,008 on total expenditure resulting to a variance of Kshs 171,860, which relates to fund administration expenses. Further, the same statement indicates that the Notes to the financial statements are set out on pages 27 to 32 instead of pages 1 to 27.</p>	<p>Negligence by the management to prepare accounts that are in line with the statutes (PFM Act & IPSAS)</p> <p>In the circumstances, the accuracy of financial statements. The reliability of the financial statements by the users is diminished. Corrections in the current year are under way.</p>	<p>Clerk – County Assembly of Bungoma</p>	<p>The management should correct the misstatements in line with IPSAS 3 that require adjustments be made in the subsequent periods from the date the misstatements were first identified. Management should prepare responses to the OAG reports within the provisions of Section 31 of the Public Audit Act.</p>	<p>Resolved</p> <ol style="list-style-type: none"> 1. Do you have the capacity to prepare the accounts that meet the statutory requirements and in line with the IPSAS that are error free? 2. Have you done the adjustments subsequently and included this in the financial statements as prior year adjustments? 3. Have you implemented measures to comply with the reporting requirements as per the public audit act and the other statutes?
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Key Issue	Root Causes	Effect/ Consequences Management	Officer Responsible	Auditor-General's Recommendations Auditor	Status: Resolved/ Unresolved Possible Questions Committee
<p>2 Cash and Cash Equivalents</p> <p>As disclosed in note 4 to The statements, the statement of financial position reflects, a bank balance of Kshs 869,186 as 30 June 2019. However, review of the bank reconciliation statements revealed that the management used the bank certificate balance instead of the reconciled cashbook balances of Kshs 2,742,872, resulting into unreconciled variance of Kshs 1,873,686.</p> <p>In the circumstances, it was not possible to confirm that the cash and cash equivalents balance of Kshs. 869,186 as at 30 June 2019 is fairly stated.</p>	<p>-Weak internal control in the management of cash and cash Equivalents – Lack of doing regular-monthly reconciliation of the cashbook.</p>	<p>Accurate reporting is done including Bank reconciliations statements that are currently attached to the Financial statements</p>	<p>Clerk – County Assembly of Bungoma</p>	<p>The management should provide an updated reconciliation for cash and bank equivalents. Regular monthly reconciliations should always be done by the management</p>	<p>Resolved</p> <p>1. Has the management provided an updated reconciliation for cash and cash equivalents.</p> <p>2. Are reconciliations being done monthly as of today?</p>

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REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for qualification

<p>1. Car and Mortgage Scheme</p> <p>1.1 Lack of Security on Mortgage and Car Loan Disbursed to staff</p> <p>As disclosed in Note 5B to the financial statements, the total non-current receivables balance of Kshs 79,517,372 in respect of the outstanding mortgage and car loan balance as at 30 June 2019. However it was noted the properties were not charged contrary to Regulation 16(1) of Bungoma county assembly (Employees mortgage scheme fund) Regulations 2018 which stipulates that the committee shall have a charge registered on the property financed through a loan granted and shall be entitled to have its name entered in all documents of title of the property. Further there was no evidence that the borrowers had taken out an</p>	<p>-Non-compliance with Regulation 16 (1) of the Public Finance Management (County Assembly Mortgage (Members) Scheme Fund) Regulations 2018 which requires the fund to have a charge registered on the property financed through a</p>	<p>-Defaulted payments by the members might lead to huge loss to the County Assembly Car Loan and Mortgage Scheme Fund</p> <p>-Failure enforcing recovery procedures in case of default. Sample documents on logbooks and the legal fees for charging process were submitted.</p>	<p>Clerk-County Assembly of Bungoma</p>	<p>-All non-current receivables-loans disbursed to members should have security as per the regulations managing County Assembly Car Loan and Mortgage Scheme Fund.</p> <p>Defaulted loans to resort to commercial interest rates. Recall loans that are non-performing</p>	<p>Resolved</p> <p>Evidence provided shows the Joint registration has been done and legal fees paid to a legal firm for the exercise.</p> <p>1. What measures has the Assembly put in place to ensure in future properties are fully secured?</p> <p>2. What is the current level of recovery to defaulted loan repayments?</p> <p>3. Is the insurance cover in place and operational noting the interest of the assembly?</p>
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Key Issue	Root Causes	Effect/ Consequences Management	Officer Responsible	Auditor-General's Recommendations	Status: Resolved/ Unresolved Possible Questions Committee
<p>insurance cover on the mortgage protection policy and a fire policy with a reputable insurance firm as per Regulation 17 of Bungoma county assembly (Employees mortgage scheme fund) Regulations 2018</p> <p>Further it was noted that the logbooks were not registered on joint ownership with the county assembly contrary to Regulation 8(2) of Bungoma county assembly (Employees car loans scheme fund) Regulations 2017 which states that the logbook of a vehicle subject to a loan from the fund shall be issued jointly between the County Assembly and the member scheme and should be kept in the custody of the officer administering the fund until the loan is repaid in full by the member of the scheme. In addition there are no evidence that the vehicles purchased through the scheme were comprehensively insured as per Regulation 12(1) of the same regulations</p>	<p>loan granted and its name entered in all documents of title for such property.</p>			<p>Auditor</p>	

Key Issue	Root Causes	Effect/ Consequences Management	Officer Responsible	Auditor-General's Recommendations Auditor	Status: Resolved/ Unresolved Possible Questions Committee
<p>1.2 Irregular Advances of mortgage loans</p> <p>As disclosed in Note 5B to the financial statements, the statement of financial position reflects Kshs 79,517,350 on long term receivables</p> <p>From exchange, transactions which includes Kshs 21,100,000 on loan disbursements paid out. However included in Kshs 21,100,000 is Kshs 19,700,000 whose application for the advanced mortgages were not supported with the following documents as prescribed by Regulation 10 (1) of the Bungoma county assembly (Employees mortgage scheme fund) Regulations 2018</p> <p>i. Copies of designs of the proposed residential property duly approved by relevant Government Agency</p> <p>ii. Bills of quantities in respect of the proposed development, renovation or repair</p>	<p>Negligence by management to expedite the loan process in a hurry or under duress</p> <p>The Fund conducted its business during the year under review in breach of the law</p>	<p>The fund was not in compliance with Regulation 10(1) of the Public Finance (County Assembly Loan Scheme Fund Regulations, 2018</p> <p>-It was not possible to ascertain the recoverability of the loan balance of Kshs. 19,700,000 reported as at 30 June, 2019.</p> <p>Sample Loan agreements and searches were provided for audit</p>	<p>Clerk-Bungoma County Assembly</p>	<p>-Perform reconciliation between the records of loan disbursements and repayments maintained by the County Assembly Car Loan and Mortgage Funds to ascertain accuracy of other arrears</p> <p>-Ensure presentation and disclosure of the loan arrears as required by the reporting format recommended by the Public Sector Accounting Standards Board (PSASB).</p> <p>Ensure all the documents to confirm the mortgages are in order like Designs, BQs are in place and the key professionals supervise the construction in addition to perfection of securities.</p>	<p>Resolved.</p> <p>Sample of the legal documents have been seen.</p> <p>1. Why didn't the entity ensure all procedures were followed?</p> <p>2. Has the entity recovered the outstanding loan arrears?</p> <p>3. Have all the title deeds been charged?</p> <p>4. Do you have a project inspection team to ensure the money is expended on the purpose for which it was applied for?</p> <p>5. Are the loans disbursed on phases in case of construction?</p>

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<p>iii. An official search of the title to the property intended to be purchased.</p> <p>iv. A verified copy of the sale agreement relating to the property</p> <p>In the circumstances, the fund management is in breach of law.</p>				Auditor	Committee
2. Lack of an Approved Budget					
Documents provided for Audit revealed that the fund did not have an approved budget contrary to Section 149(2h) of the Public Management act 2012, which requires the Accounting officer to prepare estimates of expenditure of the entity in conformity the strategic plan	Failure by management to do proper planning and strict observance of the PFM Act	Failure to meet strategic and operational objectives Currently approved budgets were provided for audit	Clerk-Bungoma County Assembly	The management should ensure that approved budget is used to control expenditure and avoid unauthorized reallocations. Ensure the fund meets the purpose for which it was established via Strategic planning and Budgeting processes	Resolved 1. Why did the entity lack an approved budget? 2. Has the entity obtained an approved budget in the current year?
3. Outstanding Borrowings by County Assembly Service Board					
As disclose under note 5A the statement of financial position	-Poor loan administrativ	-Bank statements showing	Clerk-Bungoma	The management to ensure that the Fund remain	Un Resolved What measures have the

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<p>reflects Kshs 17,402,830 on the current portion of long term receivables from exchange transactions . However included the Kshs 17,402,830 is Kshs 17,190,318 in respect of the un-refunded borrowings by the County Assembly Service Board contrary to regulation 4 of both the Public Finance Management (County Assembly Employee car loan scheme Fund) Regulations 2017 and the Public Finance Management (County Assembly Employee Mortgage Fund) Regulations 2018 which states that the purpose of the fund is to provide a loan scheme for purchase of vehicles by staff of the scheme and the purchase development renovation or repair of the staff of the scheme respectively. Further, the management did not provide loan application forms loan management committee approval minutes and loans agreement.</p>	<p>the procedure -Lack of independence between County bodies leading to management overruns.</p>	<p>clearance of the amounts were provided for audit. Loaning documents were not provided. However loan was repaid as per bank statements provided Currently CASB still owes the scheme Kshs 25,544,870.</p>	<p>County Assembly</p>	<p>Auditor within its mandate in which its main object and purpose is to provide a loan scheme for the purchase of vehicles by members of the Scheme and for the purchase, development, renovation or repair of residential property by members of the scheme respectively. Future borrowings by CASB should be stopped or charged at a rate similar to the amount at which members borrow at for it to remain sustainable.</p>	<p>Committee Fund put in place to avoid future borrowings by CASB? Have you put in place recovery mechanisms and loan administrative documents for the current borrowings?</p>

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4. Non Recovery and Remittance of Fringe Benefit Tax												
Documents provided for audit revealed that the fund management did not remit to Kenya Revenue Authority the Fringe Benefit Tax amounting to Kshs 720,076 which accrued from the low interest loans extended to its members during the year as tabulated below:	-Reluctance of the management to remit deductions on statutory dues	An amount of Kshs 8,100,000 was paid as final settlement of the tax arrears and penalties	Clerk-Bungoma County Assembly	Management to monitor on a regular basis and timely payments be done Ensure that fringe benefit tax to be charged on the total taxable value of a fringe benefit provided by an employer in the month and remitted on or before the 10 th day of the following month to KRA. <i>[Handwritten signatures and initials]</i>	Resolved The negotiated penalties and interest final amount was settled kshs 47,182,042.99 was settled What measures has the management put in place to avoid reoccurrence of noncompliance of remittances of statutory dues							
	<table border="1"> <thead> <tr> <th>Interest @3 P.A (Kshs.)</th> <th>Interest at KRA Prescribed Rate @7%P.A (Kshs)</th> <th>Taxable Fringe Benefit (Kshs)</th> <th>FBT@3 0%(Kshs)</th> </tr> </thead> <tbody> <tr> <td>1,804</td> <td>4,200,446</td> <td>2,400,252</td> <td>720,076</td> </tr> </tbody> </table> <p>The management of the fund did not therefore, comply with section 12 (b)(1) and (3) of the income tax act 2010 that require an employer to</p>	Interest @3 P.A (Kshs.)	Interest at KRA Prescribed Rate @7%P.A (Kshs)	Taxable Fringe Benefit (Kshs)	FBT@3 0%(Kshs)	1,804	4,200,446	2,400,252	720,076			
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1,804	4,200,446	2,400,252	720,076									

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<p>pay fringe benefit tax on behalf of the employee or director an interest rate lower than the market interest rate and section 12(3) which require the benefit tax to be charged on the total taxable value of a fringe benefit provided by an employer in a month and remitted on or before the tenth day of the following month to KRA</p>					

Regards
Patrick Kimani
for Auditor General

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*Original He was born
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REPORT ON THE FINANCIAL STATEMENTS

UNQUALIFIED REPORT

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Basis for qualification

1. Outstanding Borrowings by County Assembly Service Board

As previously reported, Note 5A to the financial statements reflects a current loan repayments due balance of Kshs.9,862,225 in respect of un-refunded borrowings by the County Assembly Service Board in contravention of Regulation 4 of the Public Finance Management (County Assembly Employee Car Loan Scheme Fund) Regulations, 2017, and, Regulation 4 of the Public Finance Management (County Assembly Employee Mortgage Fund) Regulations,	-Poor loan administrative procedure -Lack of independence between County bodies leading to management overruns	-Bank statements showing clearance of the amounts were provided for audit. Loaning documents were not provided. However loan was repaid as per bank statements provided Currently CASB still owes the scheme Kshs 25,544,870.	Clerk- County Assembly of Bungoma	The management to ensure that the Fund remain within its mandate in which its main object and purpose is to provide a loan scheme for the purchase of vehicles by members of the Scheme and for the purchase, development, renovation or repair of residential property by members of the scheme respectively	Un Resolved Bank Statement for the final payment has been provided as evidence of final clearance. What measures have the Fund put in place to avoid future borrowings by CASB ?
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<p>2018, which state that the object and purpose of the Fund is to provide a loan scheme for the purchase of vehicles by staff of the Scheme and for the purchase, development, renovation or repair of residential property by staff of the Scheme, respectively.</p> <p>In the circumstances, the Fund Management was in breach of the law.</p>					
<p>2. Late Submission of the Financial Statements</p>					
<p>The financial statements for the Fund were submitted for audit on 7 October, 2021, contrary to the provisions of Section 116(7)(b) of the Public Finance Management Act, 2012, and Section 47(1) of the Public Audit Act, 2015, which require financial statements to be submitted to the Auditor-General for audit within three months after the end of the financial year to which they</p>	<p>Non completion assignments on time by staff Poor planning</p>	<p>Covid 19 pandemic caused staffs to be away causing delay in the completion of the assignments. In the current year the same has happened</p>	<p>Clerk- Bungoma County Assembly</p>	<p>Build capacity and administrative procedures in order to comply with the statutes. Carry out adequate planning to complete assignments on time.</p>	<p>Unresolved 1. Explain why management have failed to meet the statutory deadlines. 2. Have you put administrative sanctions on management or board for failure to comply with the statutes?</p>

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<p>relate, in this case 30 September, 2021.</p> <p>In the circumstances, the Fund Management was in breach of the law.</p>					
<p align="center">3. Professional services Costs</p>					
<p>The expenditure of Kshs 2,696,665 shown in the statement of financial performance under general expenses includes, as shown under note 3, expenditure of Kshs 619,628 incurred on professional services. The amount was paid to a local law firm for provision of legal services relating to preparation and registration of legal charges on staff mortgage loans, despite the fact that the Assembly has an internal legal officer. No explanation was provided for incurring expenditure on duties that ordinarily should be performed in-house</p>	<p>Failure by management to deploy staff appropriately</p>	<p>Management is in agreement Currently there is a legal counsel who does the registrations</p>	<p>Clerk-Bungoma County Assembly</p>	<p>The management should ensure that the staff employed to carry out specific functions carry it out diligently to avoid loss of public funds. This is a voidable expenditure</p>	<p>Resolved Bungoma County Assembly has employed a principal legal counsel whose duties include, among others, providing legal services to the Assembly, why did not the assembly utilize the staff?</p>

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for Auditor General

