

COUNTY GOVERNMENT OF KISUMU



COUNTY ASSEMBLY OF KISUMU

THE HANSARD

Official Report

SECOND ASSEMBLY – SIXTH SESSION

Wednesday 29th June, 2022

House met in the Main Chamber at 9:00 a.m.

(The Speaker (Hon. Elisha Jack Oraro) in the Chair)

PRAYERS

The Speaker (Hon. Oraro): Good morning Honourable Members. I want to request under Standing Order No. 32 (2) that the Serjeant-at-Arms rings the quorum bell for the first five minutes.

(Quorum bell rung for five minutes)

The Speaker (Hon. Oraro): Hon. Rashid Miruka, can you confirm if we have quorum.

Hon. Miruka: Thank you Mr. Speaker. There is quorum.

The Speaker (Hon. Oraro): Mr. Clerk, please take us through the Order Paper of today.

The Speaker (Hon. Oraro): Next order!!

MOTION

PUBLIC INVESTMENTS AND ACCOUNTS COMMITTEE REPORT ON ITS
CONSIDERATION OF THE AUDITOR GENERAL'S REPORT ON THE FINANCIAL
STATEMENTS OF KISUMU COUNTY TRADE FUND FOR THE YEAR ENDING 30TH
JUNE, 2019

BY

HON. MAUREEN OTIANG', MCA, CHEMELIL/TAMU WARD

(CHAIRPERSON, PUBLIC INVESTMENTS AND ACCOUNTS COMMITTEE)

The Speaker (Hon. Oraro): What is it Hon. John Atieno?

Hon. Atieno: Thank you Mr. Speaker. Allow me to move this motion on behalf of Hon. Maureen Otiang'?

The Speaker (Hon. Oraro): Proceed Honourable Member.

Hon. Atieno: Hon. Speaker and Honourable Members, PURSUANT to the provisions of Article 229(7) of the Constitution of Kenya, 2010, the County Executive Committee member for Finance and Economic Planning forwarded the Report of the Auditor General on the Financial Statements of Kisumu County Trade Fund for the year ended 30th June 2019. (See Annex 1- AG report) The report was tabled in the House and subsequently committed to the Public Accounts and Investments Committee for legislative processing and reporting pursuant to Article 229(8) of the Constitution of Kenya 2010 which states that "within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action"

Establishment and Mandate of the Committee

Hon. Speaker and Honourable Members, the Public Accounts and Investments Committee is established under Standing Order No. 188 of the Kisumu County Assembly Standing Orders and is mandated to undertake the following functions;

- a. Examination of the accounts showing the appropriations of the sum voted by the County Assembly to meet the public expenditure and of such other accounts laid before the House as the committee may think fit;
- b. Examination of the working of the Public Investments
- c. Examine the reports and accounts of the Public Investments and,

- d. Examine in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

Composition of the Public Accounts and Investments Committee

The Committee as currently constituted comprises of the following Honorable Members,

NAME	POSITION
1. Hon. Maureen Otiang'	Chairperson
2. Hon. Benny Oiko	Vice Chairperson
3. Hon. Paul Okiri	Member
4. Hon. Seth Okumu	Member
5. Hon. Johnson Guya	Member
6. Hon. Roy Samo	Member
7. Hon. Beatrice Pamela	Member
8. Hon. Nancy Owiti	Member
9. Hon. John Atieno	Member
10. Hon. Julius Genga	Member

Committee Secretariat

1. Austine Ochieng	Committee Clerk
2. Brenda Chasi	Clerk Assistant
3. Edward Odanga	Hansard
4. Geoffrey Omollo	Secretariat
5. Dominic Muinde	Legal Counsel
6. Faith Judith	Serjeant-at-arm
7. Raphael Juma	Research

Acknowledgement

Hon. Speaker and Honourable Members, May I take this opportunity to thank all members of the Public Accounts and Investments Committee for their input and valuable contributions during the entire exercise. The Committee also takes this opportunity to thank the offices of the Speaker and the Clerk for providing a conducive environment. We register our sincere gratitude to the Accounting Officers of the Kisumu County Trade Fund for their cooperation during the entire exercise. We are also appreciative of the secretariat attached to this Committee for their endless contributions towards the committee matters. It is now my privilege to table this report of the Public Accounts and Investments Committee on the consideration of the Auditor General's report

on the financial statements of the Kisumu County Trade Fund for the year ended 30th June 2019 for consideration and adoption.

LEGAL FRAMEWORK & GUIDING PRINCIPLES

Legal Framework

Hon. Speaker and Honourable Members, the Committee was guided by the following legal instruments;

- 1) Constitution of Kenya 2010: Article 229 of the Constitution of Kenya, 2010 requires the Auditor General within a period of six months after the end of each financial year to audit and report, in respect of that financial year, on;

The accounts of the National and County governments;

- a) The accounts of all funds and authorities of the National and County governments;

The Constitution further indicates that, all aspects of public finance shall be guided by the following principles;

- a) Openness and accountability including public participation in financial matters.
 - b) The public finance system shall promote an equitable society, and in particular:
 - i). the burden of taxation shall be shared fairly;
 - ii). Revenue raised nationally shall be shared equitably among national and County governments and
 - iii). Expenditure shall promote equitable development of the country, including by making special provision for marginalized groups and areas
 - c) The burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
 - d) Public money shall be used in a prudent and responsible way and;
 - e) Financial management shall be responsible, and fiscal reporting shall be clear
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- 2) Public Audit Act 2015; Section 7 mandates the auditor general to: (i) Give assurance on the effectiveness of internal controls, risk management and overall governance at National and County Government; (ii) Undertake audit activities in state organs and public entities to confirm whether or not public money has been applied lawfully and in an effective way

- 3) Public Finance Management Act, 2012: Section 149 of the Public Financial Management Act, 2012 outlines the responsibilities of Accounting Officers for the County Government and County Assembly and it categorically states that; “An accounting officer is accountable to the County Assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is; Lawful and authorized; and Effective, efficient, economical and transparent. The Act primarily provides for the effective management of public finances by the national and county governments; the oversight responsibility of Parliament and county assemblies; the different responsibilities of government entities and other bodies. *Section 3* emphasizes on the need for upholding the fiscal responsibility principles. These principles are to be observed in both the National and County levels of government. The Act further mandates the County Accounting officers to monitor, evaluate and oversee the management of their public finances.
- 4) Public Procurement and Disposal Act, 2015: This Act primarily seeks to give effect to Article 227 of The Constitution; to provide procedures for efficient public procurement and for assets disposal by public entities. The disposal and procurement process ought to be transparent, accountable and cost-effective.

Hon. Speaker and Honourable Members, further to the above legal framework, Article 226(1) (5) of the Constitution of Kenya, 2010 stipulates that:- *‘If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not’*.

In this report, the Committee has applied Article 226(1) (5) of the Constitution and Section 156 of the Public Finance Management Act, 2012 to make various recommendations as indicated in this report.

Guiding Principles

Hon. Speaker and Honourable Members, in the execution of its mandate, the Committee was guided by core Constitutional and Statutory principles on Public Finance Management as well as established customs, traditions, practices and usages. These principles include the following;

1) Constitutional Principles on Public Finance

Article 201 of the Constitution of Kenya 2010 provides for fundamental principles aimed at guiding all aspects of Public Finance in the republic. It states that the principles are; inter alia;

- i). Openness and Accountability including public participation in financial matters;
- ii). Public money shall be used in a prudent and responsible way; and
- iii). Financial management shall be responsible and fiscal reporting shall be clear.

2) Obligations of the Accounting officer

Article 262(2) of the Constitution provides, inter alia, that;

- i). The Accounting officer of a national public entity is accountable to the national assembly for its financial management, and the accounting officer of a county public entity is accountable to the county assembly for its financial management.
- ii). Subsequently, section 149(1) of the Public Finance Management Act 2012 provides that; an accounting officer is accountable to the County Assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is; (i) Lawful and authorized and; and (ii) Effective, efficient and transparent

These provisions obligate all the accounting officers to appear before the Public Accounts and Investments Committee to respond to audit queries raised by the Auditor General

3) Direct Personal Liability

Article 226(5) of the Constitution is unequivocal that, if the holder of a Public Office or a political office, directs or approves the use of Public Funds contrary to the law or instruction, the person is liable for any loss arising from that use and shall make good, the loss, whether the person remains the office holder or not, Consequently, Section 203(1) of the Public Finance Management Act enacts that; a public officer is personally liable for any loss sustained by a County Government and is attributed to; (i) The fraudulent or corrupt conduct, or negligence of the officer or, (ii) The officer's having done any act prohibited by Sections 196, 197, and 198

The Committee considers these constitutional and legal provisions as the basis for holding Accounting Officers and other public officers directly and personally liable for any loss of Public Funds that may occur under their watch.

SUMMARY OF AUDITOR GENERAL'S OPINION ON THE KISUMU COUNTY TRADE FUND FOR THE FINANCIAL YEAR ENDED 30, JUNE 2019

Qualification status of the report: Qualified opinion

Hon. Speaker and Honourable Members, the Auditor General gave a qualified opinion on the Financial Statements of the Kisumu County Trade Fund for the year ended 30, June 2019, implying that except for the issues discussed in this report, the Financial Statements for the Fund during the FY 2018/2019, presented fairly the financial position of the Fund.

Committee Review and Interrogation of the Report and the Financial Statements of Kisumu County Trade Fund for fy2018/19

Hon. Speaker and Honourable Members, following the qualified rating of the Auditor General's report on the Kisumu County Trade Fund for the year ended 30th June 2019, the committee reviewed the financial statements and the basis for the opinion of the auditors and noted the following key issues;

- I. That there were Unexplained Variance in Cash and Cash Equivalents in the Statement of Financial Position
- II. In the current portion of long term receivables from exchange transactions, there were unconfirmed receivables. There were no relevant schedules/notes in the financial statements.

Hon. Speaker and Honourable Members, after this review, the committee resolved to seek for a written response from the fund management before an invitation to give more details on the same. (See Annex 2 – letter seeking for response and an invitation)

The department responded via a letter dated 15th February 2022. (See Annex 3 – Management response)

BASIS OF QUALIFIED OPINION/ISSUES RAISED BY THE AUDITOR GENERAL AND MANAGEMENT RESPONSES

Unexplained Variance in Cash and Cash Equivalent

Hon. Speaker and Honourable Members, the Statement of Financial Position as at 30th June, 2019 reflects a cash and cash equivalents balance of Kshs.4, 268,280 which differs with the balance of Kshs.4, 164,405 reflected under Note 11 to the financial statements. The resultant variance of Kshs.103, 875 has not been explained or reconciled. Consequently, the accuracy and completeness of cash and cash equivalents balance of Kshs.4,268,280 could not be confirmed

Management Response

The Management responded as follows;

That the Financial position as at 30, June 2019 reflects a cash and cash equivalents balance of Kshs.4,268,280 which differs with the balance of kshs.4,164,405 reflected under Note 11 of the financial statement. Please refer to pages 11 and 32 of the annex copy of the financial statement provided for your verification. The balance reads kshs.4,164,405 and not kshs.4,268,280 as stated in the submission report.

Committee Deliberations

Hon. Speaker and Honourable Members, in a meeting with the representatives of the Office of the Auditor General and the fund management, the committee was informed by the representatives from the Office of the Auditor General that the Financial Statements that were audited and those that were presented in the response by the management were two different things. After long deliberations, it was concluded that the financial statements presented were a result of amending the audited financial statements to suit the query that was raised by the Auditor. This matter therefore remained unresolved. (See Annex 4- disparity in the audited financial statements and what is in the response)

Unconfirmed Receivables

Hon. Speaker and Honourable Members, the statement of financial position as at 30th June, 2019 reflects current portion of long term receivables from exchange transactions of balance Kshs.856,000. However, the balance was not supported with relevant schedule or any note in the financial statement. In the circumstance, the accuracy and completeness of current portion of long-term receivables from exchange transactions as at 30 June, 2019 could not be confirmed

Management Response

Hon. Speaker and Honourable Members, the management of the Kisumu County Trade Fund responded thus, that the fact that the balance was not supported with relevant schedule or any explanatory note in the financial statement for the said year could have been an oversight during the presentation of the documents for the financial year in question.

Committee Deliberations

Hon. Speaker and Honourable Members, first, the committee observed that the management was in concurrence with the Auditor General that they failed to provide supporting schedules to support the current portion of long term receivables from exchange transactions. The management attached a schedule which both the committee and the Office of the Auditor General scrutinized.

After long deliberations and following an advice from the Office of the Auditor General on the same, it was noted that the schedule that was used to support the receivables was for the year ended 30, June 2020 while the year in question was the previous financial year ending 30th June 2019. The matter therefore remained unresolved. (See Annex 5- schedule)

COMMITTEE FINDINGS/OBSERVATIONS

Hon. Speaker and Honourable Members, following the analysis of the report of the Auditor General on the financial statements of Kisumu County Trade Fund for the year ended 30, June 2019, the written and verbal submissions on the issues raised and the advices from the representatives of the Office of the Auditor General, the committee makes the following as findings;

- 1) THAT the copy/ version of the Financial Statements of Kisumu County Trade Fund for the financial year ended 30, June 2019 audited was different from the version submitted to the County Assembly by the Trade Fund Management.
- 2) THAT there was an attempt by the management of Kisumu County Trade Fund to doctor the financial statements and the loan schedules of the fund in responding to the issues raised by the Auditor General
- 3) THAT the fund management un-procedurally amended the financial statements of the Kisumu County Trade Fund for the year ended 30, June 2019.

- 4) THAT with regards to the issue on Unexplained variance in cash and cash equivalent: the committee finds that indeed the statement of financial Position of the fund as at 30th June, 2019 reflects a cash and cash equivalents balance of Kshs.4,268,280 which differs with the balance of Kshs.4,164,405 thus resulting to an unexplained variance of Kshs103,875 thus putting to question the accuracy and completeness of cash and cash equivalents balance of Kshs. 4,268,280.
- 5) THAT with regards to the issue of Unconfirmed Receivables, the supporting schedule that was provided by the fund management is for the Financial year ended 30, June 2020 and not for the financial year in question
- 6) THAT subsequent Auditor General's Report on the Financial Statements of the Kisumu County Trade Fund (FY 2019/2020) is yet to be submitted to the Assembly.

COMMITTEE RECOMMENDATIONS

Hon. Speaker and Honourable Members, based on the above findings and the committee deliberations on the audit issues raised by the Auditor General, the committee makes the following recommendations;

- I. THAT by a copy of this report, the County Executive Committee member for Finance and Economic Planning immediately submits the correct set of financial statements, schedules and all relevant documents relating to the fund for the year ended 30, June 2019 to the Office of the Auditor General for a Special Audit.
- II. THAT the report on the special audit be submitted to this Assembly for interrogation in not more than three months upon adoption of this report
- III. THAT the subsequent Audit Reports be submitted in time for consideration as required by the Constitution of Kenya 2010, Section 229(8)

May I call upon Hon. Nancy Owiti to second?

The Speaker (Hon. Oraro): Hon. Nancy Owiti.

Hon. Nancy: Thank you Mr. Speaker. I rise to second the report as presented by the Member. Thank you.

The Speaker (Hon. Oraro): Honourable Members, the PIC/PAC report on the consideration of the Auditor General's Report on the Financial Statements of Kisumu County Trade Fund for the year ending 30th June, 2019 has been moved by Hon. John Atieno on behalf of Hon. Maureen Otiang' and seconded by Hon. Aslam Khan. I therefore open the debate on the report as per our Standing Orders. Hon. Vitalis Otura.

Hon. Otura: Thank you Mr. Speaker. The report read by the Member is clear and straight to the point. It is unfortunate that I have been pressing for the implementation of the recommendations we have been giving in this House but quite a number have not seen the light of the day.

Mr. Speaker, we are hours to end of the Second term of this Assembly and I would want to say that if we adopt such good report with these very good recommendations without implementation then, we shall be failing. I don't want to see County Assembly of Kisumu falling in the list of institutions that has failed.

Mr. Speaker, it is also quite unfortunate that the report is for Financial Year ended 30th June, 2019 and we are in 2022. This Select Committee has also touched on the delay of the submissions of this report to Assembly. I want to end by saying that, it is my prayer that the Third Assembly will continue pressing the Department of Finance and Economic Planning to be submitting these reports on time as stipulated by law. Thank you.

The Speaker (Hon. Oraro): Hon. Johnson Guya.

Hon. Guya: Thank you Mr. Speaker. Allow me to also add my voice on the report that is before us. The committee worked tirelessly to prepare this report. I also wish that this report could be implemented as Hon. Otura said. I thank the committee for the good work they have done. Thank you.

The Speaker (Hon. Oraro): Yes, Hon. Jennipher Obonyo.

Deputy Whip (Hon. Obonyo): Thank you Mr. Speaker. May I call the mover to reply?

The Speaker (Hon. Oraro): Hon. Atieno.

Hon. Atieno: Thank you Honourable Speaker. I rise to thank the Members for robust discussion and overwhelming support they have accorded this report. I urge you to support the adoption of the report. Thank you.

The Speaker (Hon. Oraro): Honourable Members, now that the Report from the Select Committee of PIC/PAC in its consideration of the Auditor General's Report on the Financial Statements of Kisumu County Trade Fund for the year ending 30th June, 2019 has been presented by Hon. John Atieno on behalf of Hon. Maureen Otiang' seconded and debated. As per our Standing Order. I want to put a question for the adoption of this report.

(Question put and agreed to)

The Speaker (Hon. Oraro): Honourable Members, the Report from the Select Committee of PIC/PAC on its consideration of the Auditor General's report on the Financial Statements of Kisumu County Trade Fund for the year ending 30th June, 2019 has been adopted today Wednesday 29th June, 2022 at 09:45 a.m.

Further, I want to direct that the recommendation therein be communicated to the County Executive Committee Member for Finance and Economic Planning through the County Secretary, the Auditor General's Office (Kisumu) and the Senate for purposes of recording and future use.

The Speaker (Hon. Oraro): Next order!

ADJOURNMENT

The Speaker (Hon. Oraro): Honourable Members, there being no other business to transact, the House stands adjourned until today Wednesday 29th June, 2022 at 2:30 p.m.

(The House rose at 9:50 a.m.)

Addendum

The Hansard Team

Zablon Otiende – Senior Hansard Reporter

Edward Odanga – Hansard Reporter

Fanuel Okode – Hansard Reporter

Patrick Okoyo – Hansard Reporter

Jacklyne Otieno – Hansard Reporter

Jesca Otieno – Hansard Reporter

Vallery Achieng’ – Hansard Reporter