



THE COUNTY ASSEMBLY OF BOMET

THIRD ASSEMBLY – SECOND SESSION

THE COUNTY PUBLIC INVESTMENTS AND ACCOUNTS COMMITTEE
REPORT ON THE EXAMINATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE BOMET
WATER AND SANITATION COMPANY LIMITED FOR THE YEAR ENDED 30th JUNE 2019

SEPTEMBER, 2023



⑤ Tabled on 20th SEPT
2023 at 2:30 P.M
MAY

① Am-Speakers
you may approve for
tabling
MUSAHA
20/09/2023

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Abbreviations and Acronyms.

BOMWASCO: Bomet Water and Sanitation Company Limited

CECM:County Executive Committee Member

HDP: High Density Pipes

IPSASs: International Public Sector Accounting Standards

LVSWB Lake Victoria Service Water Board

MOU- Memorandum of Understanding

NRW-Non-Revenue Water

PSASB: Public Sector Accounting Standards Board

UFMUltrasonic Flow Meter

1.0 INTRODUCTION

Pursuant to the mandate of the County Public Investments and Accounts Committee and on behalf of the members of the Committee, I beg to present the Report of the Committee on the issues raised in the Report of the Auditor-General on Bomet Water and Sanitation Company Limited for the period ended 30th June, 2019.

The audit objective was to ascertain whether the systems formulated and applied by the Company were reliable for the management of its resources in delivering its mandate.

The audit covered the Company's expenditure for the period commencing 1st July 2018 to 30th June 2019. Upon concluding the audit the Auditor-General prepared a report touching on the following areas:

- a) Report on the Financial Statements
- b) Report on the Lawfulness and Effectiveness in use of Public Resources
- c) Report on Effectiveness of internal controls, Risk Management and Governance

1.1 Establishment of the Committee

The County Public Investments and Accounts Committee is a select Committee established under the Standing Order No. 198 (1) and is responsible for the examination of the workings of public accounts and investments within the County.

1.2 Committee Membership.

The Committee as currently constituted comprises of the following Honourable Members: -

1. Hon. Charles Langat Chairperson
2. Hon. Denis Kiplangat Vice Chairperson
3. Hon. Anne Chepkemoi Member
4. Hon. Olivia Koskei Member
5. Hon. Richard Rutoh Member
6. Hon. Denis Busienei Member
7. Hon. Caroline Chelangat Member

1.3 Mandate and powers of the Committee.

Pursuant to Standing Order 198 (2), the Committee is mandated to do the following: -

- a) The examination of accounts showing the appropriations of the sum voted by the County Assembly to meet the public expenditure and such other accounts laid before the County Assembly as the Committee may deem fit.
- b) The examination of the reports, accounts and workings of the county public investments;**
- c) The examination, in 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.**

The Committee, under the provisions of Article 195 of the Constitution of Kenya and Standing Order 184 is mandated to exercise all the powers and privileges bestowed on the County Assembly by the Constitution and relevant statutes, including the power to summon witnesses,

examine them on oath, receive evidence and to request for and receive papers and documents from the County Government and the public.

1.4 Guiding Principles

In the execution of its mandate, the Committee is guided by core constitutional and statutory principles on public finance management, as well as established legislative customs, traditions, practices and usages. These principles include:

i. **Constitutional Principles on Public Finance**

Article 201 provides for the fundamental principles of public finance. Under the said Article, the following principles shall guide all aspects of public finance in the republic;

- *201(a) there shall be openness and accountability, including public participation in financial matters;*
- *201(d) public money shall be used in a prudent and responsible way; and*
- *201(e) financial management shall be responsible, and fiscal reporting shall be clear.”*

Therefore, in arriving at its observations and recommendations, the Committee was guided by these principles during the preparation of this report.

ii. **Direct Personal Liability**

Article 226(5) of the Constitution is emphatic 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”. The Committee has relied on this constitutional provision as the basis for holding each Accounting Officer and other Public Officers directly and personally liable for any loss of public funds under their watch. The Committee has and will continue to invoke this provision in its recommendations to hold those responsible personally accountable. It is envisaged that it will serve as a deterrent measure.

iii. **Obligations of the Accounting Officers**

Section 156 (1) of the Public Finance Management Act, 2012 provides that:

“if an accounting officer reasonably believes that a public officer employed by a County Government entity has engaged in improper conduct in relation to the resources of the entity, the accounting officer shall –

- a) Take appropriate measures to discipline the public officer in accordance with regulations; or
- b) Refer the matter to be dealt with in terms of the statutory and other conditions of employment applicable to that public officer.

Section 156 (4): “for purposes of this section, a public officer or accounting officer engages in improper conduct if the officer-

- a) contravenes or fails to comply with this Act or any regulation in force;
- b) undermines any financial management procedures or controls;
- c) makes or permits an expenditure that is unlawful or has not been properly authorised by the entity concerned; or

d) fails without reasonable cause to pay eligible and approved bills promptly in circumstances where funds are provided for."

Section 156(5): "disciplinary measures under this section may not be taken against a public officer or accounting officer under subsection (1) (a) or (2) (a) unless the officer has been given an opportunity to be heard in relation to the alleged improper conduct concerned."

1.5 Acknowledgement

I wish to take this opportunity to thank the Honourable Members for their hard work and commitment which made the taking of evidence and preparation of this report successful.

It is my pleasant duty and privilege, on behalf of the County Public Investment and Accounts Committee, to present this report on the Report of the Auditor-General on Bomet Water Company Limited for the year ended 30th June, 2019 for debate and consideration.

Signed  Date 19/09/2023

Hon. Charles Langat-

Chairperson, County Public Investment and Accounts Committee

1.6 Committee ownership.

We, Honourable members of the County Public Investments and Accounts Committee do hereby append our signatures to this report to affirm our approval and confirm its accuracy, validity and authenticity: -

| NO. | NAME | DESIGNATION | SIGNATURE |
|-----|-------------------------|-------------|---|
| 1. | Hon. Charles Langat | Chairperson |  |
| 2. | Hon. Denis Kiplangat | Vice Chair |  |
| 3. | Hon. Anne Chepkemoi | Member | |
| 4. | Hon. Olivia Koske | Member |  |
| 5. | Hon. Caroline Chelangat | Member |  |
| 6. | Hon. Denis Busienei | Member |  |
| 7. | Hon. Richard Rutoh | Member |  |

2.0 THE COMMITTEE REPORT ON THE ISSUES RAISED BY THE AUDITOR GENERAL FOR THE FINANCIAL YEAR 2018/2019

2.1 Introduction

The County Assembly of Bomet received the Report of the Auditor-General on Bomet Water and Sanitation Company Limited (BOMWASCO) which was subsequently tabled and referred to the County Public Investments and Accounts Committee on 23rd March 2022. In dealing with the report, the Committee invited the County Executive Committee Member in charge of water and environment, Managing Director of the Company and other witnesses to respond to all the audit queries raised in respect of the Financial Operations of the Company for the Year ended 30th June 2019.

2.2 Committee Proceedings

The Committee held a total of five sittings to deliberate on the issues raised by the Auditor-General. On 16th May 2023, the management of the Company appeared before the Committee and responded to the audit queries for the year under review. The management of the Company was tasked to explain in detail all the measures the Company has put in place to ensure that public funds are expended in compliance with the law. During its sittings, the Committee closely examined and heard evidence from the witnesses and also reviewed various relevant documents.

In taking evidence, the Committee was guided by the existing procedures and modalities of operation of the Bomet County Assembly derived from the Constitution of Kenya, the Standing Orders, common practices and rulings and directives by the chairperson

2.3 General overview of the Auditor-General Report for the period under review

The committee noted that the Auditor-General upon auditing the Financial Statements of BOMWASCO which comprise of the statement of financial position as at 30 June 2019, statement of profit and loss and other comprehensive income, statement of changes in equity, statement of cash flows and statements of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and section 35 of the Public Audit Act, 2015, was able to express Qualified Opinion.

Responses, Observations and Recommendations on Issues raised in the Audit Report

Report on the Financial Statements

1.0 Unreconciled Trade and Other payables

As disclosed in Note 17 to the financial statements, the statements of financial position reflects trade and other payables balance of Kshs 52,976,496 which customer deposits amounting to Kshs. 2,527,488. However, the balance includes a long outstanding debt owed to Lake Victoria South Water Board (LVS WB) of Kshs. 8,441,949. The balance differs significantly with the

balance of Kshs.10,902,651 reflected in the books of accounts of the Board resulting to an unexplained variance of Kshs.2,460,702.

In the circumstances, the accuracy of amount owed to the Board of Kshs.8,441,949 as at 30 June, 2019 could not be confirmed.

Management response

The Management submitted that Bomet Water Company Limited owes LVSWB Kshs 8,441,949 as reflected in note 17 page 26 of the financial statement. The variance of Kshs 2,460,702 has since been reconciled with the Agency through Circularization dated 21st March 2023 which confirmed the true balance of Kshs 8,441,949. The management submitted a copy of the Circularization letter and confirmation by the Agency for verification (Annex 1).

Committee observation

The Committee was satisfied with the response and the matter was marked as resolved.

Committee Recommendation.

The Committee recommends that the management

- (i) Must at all times ensure that proper documentation and explanations are given to the Auditor-General on time in order to avoid such audit queries arising in the future.
- (ii) Should put in place a proper record management system including incorporating ICT in its record management
- (iii) Should also facilitate continuous training for the employees

2.0. Unsupported Land Value

As disclosed in Note 12 to the financial statements, the statements of Financial position reflects property, plant and equipment balance of Kshs.22,853,207 which includes land with a net book value of Kshs.927,940 which was not supported by a valuation report. In the circumstances, the accuracy and valuation of the land balance of Kshs.927,940 as at 30 June, 2019 could not be confirmed.

Management response

The management submitted that the company procured a parcel of land reference no. Kericho/Kimulot/2463 at a cost of Kshs.927,940 and further availed a valuation report dated 28th October 2017 for audit verification (Annex 2).

Committee observation

The Committee was satisfied with the response and the matter was marked as resolved.

Committee Recommendation.

The Committee recommends that the management must at all times ensure that proper documentations and explanations are given to the Auditor-General on time in order to avoid such audit queries arising in future.

3.0 Unsupported Inherited community Loan

The statement of financial position reflects a non-current asset balance of Kshs.3,726,301 in respect of Kamureito Water Project representing amount of Community loan taken over by the Company but which has not referenced or disclosed under the notes to the financial statements. However, Management did not provide documents for basis of the taking-over the community project loan or the project status report to assess whether the Company realized value for money. Further, although the Company stopped repayments in July, 2017 and the loan continues to attract interest at the rate of 18.5% per annum, the company has not incorporated the liabilities in the financial statements.

In the circumstances, the accuracy and validity of the asset balance of Kshs.3,726,301 reflected in the statement of financial position as at 30 June, 2019 could not be confirmed.

Management response

The management submitted that;

- (i) The amount in question in relation to Kamureito Water project amounting **Kshs. 3,726,301** was disclosed in page two (2) of financial position as at 30th June 2019, loan repayment schedule and agreement.
- (ii) The company took over the project on 3rd September 2013 through public participation as per minutes dated 5th June 2013 and 26th June 2013. At the time of taking over, the project was experiencing a lot of challenges and not able to serve the intended project area, as stated in the minutes of take over **MINN01/3/2013**, hence the asset and liabilities relating to the project was passed over to the company. Further, copies of minutes of public participation dated 5th June 2013 and 26th June 2013 was submitted for audit verification (**Annex 3, c and d**)
- (iii) During the period under review the company had stopped servicing outstanding loan of **Kshs.443,373** as reflected on **page 28 note 19** of the financial statement due to cash flow challenges, however the company has made provision of **Kshs.750,000** inclusive of accrued in the current year financial budget to clear the loan. Further, copies of minutes of public participation dated 5th June 2013 and 26th June 2013, Kamureito loan repayment schedule and agreement was submitted for audit verification (**Annex 3, a and b**)

Committee observation

The Committee was concerned that failure by the Company to service the loans with regards to the project inherited from community since July, 2017 has caused the liabilities to increase as a result of interests and penalties. It was also evident that there was laxity on the part of the management of the company to address the issue of settling the liabilities.

Committee Recommendation

The Committee recommends that all the outstanding loan of Kamureito Water Project which was taken over by BOMWASCO should be serviced and cleared within the current financial year so as to avoid further costs in interests and penalties.

Report on other Matter

Unresolved Prior Year Matters

In the audit report of the previous year, several issues were raised. However, the management has not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury's Circular Ref:PSASB/1/12Vol. 1(44) of 25 June, 2019.

Management response

The management submitted that it is true that 2019 financial statement was prepared using 2018 template as circulated by PSASB instead of 2019 template as published in their website. Further, the management also submitted that it has since complied with all circulars issued by PSASB and National Treasury every year and therefore, complied with Public Sector Accounting Standards Board templates as evident in the subsequent financial year reports.

Committee Observation

The Committee observed that the response was satisfactory.

Committee Recommendation

The committee recommends that the management must always comply with Public Sector Accounting Standards Board templates as issued from time to time.

REPORT ON THE LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1.0 Unremitted Statutory Deductions

As disclosed in Note 17 to the financial statements, the statement of financial position reflects a balance of Kshs.52,976,496 under trade and other payables which constitutes staff salary deductions balance of Kshs. 17,310,957. Of this amount, Kshs.12,910,821 relates to deductions not remitted to LAPTRUST. The Company is exposed to the risk of incurring penalties and litigation with the continued delay in remitting the deductions as well as interests and compromises the employees' pension in retirement. Consequently, the Management is in breach of the law.

Management response

The management submitted that it is true during the year under review the company had unremitted statutory deduction of Kshs 17,310,957 as 30th June 2019. This was occasioned by the cash flow challenges faced by the company which was caused by default payment by our major customers that include Kericho County which owed the

Annex 4(c)- Company **Kshs 24,374,766** as per the ledger report. The Company has put in place measures to enhance revenue collections and on 28th October 2019 the Company made a payment of **Kshs. 6,000,000** to **LAPTRUST** and also **Kshs. 6,690,851** to other vendors. The management also submitted a copy of ledger report for Kericho (**Annex 4(a),**) a copy of LAPTRUST payment dated 28th October 2019 (**Annex 4(b)-**) and a copy of payment lists to other vendors (**Annex 4(c)**).

Committee observation

The committee observed;

- (i) That failure to remit statutory deductions from employees' salaries had far reaching implications which negatively affects the employees of the company. The committee also noted that as at may 2023, salaries for five months had not been paid which subject employees to pecuniary embarassement.
- (ii) That there has been no clear strategies on to deal with revenue collections on how to restructure and turn around the company to become profitable.
- (iii) There is no clear plan on addressing the issue of company employees and their remuneration and entitlements by the company, discripancies on revenues.

Committee Recommendations

The Committee recommends that the company's management must prepare a clear and detailed arrangement on how unpaid statutory deductions and employee salaries are settled within 90 days of adoption of this report.

2.0 Inadequate Disclosure on the Company ownership

The statement of financial position reflects ordinary share capital balance of Kshs. 100,000. Section 5 of the Memorandum of Association and Articles of Association indicted the company's capital as Kshs. 100,000 divided into 100,000 shares of Kshs. 1 each. At the time of audit, only three(3) shares had been allotted to three(3) persons other than the County Government of Bomet but whose details were not made available for audit review. The allotment of the remaining 99,997 shares to the County Government could not be established as they were unsupported by way of shares certificates. In the circumstances, the ownership of the Company could not be ascertained.

Management response

The management submitted that the following shares certificates were issued on 6/1/2021 in line with the Water Act 2016 as follows;

- County Government of Bomet -99,997 shares 01
- CECM-Water -1 share number 07
- County Secretary -1 share number 08
- CECM-Finance -1 share number 09.

The management also availed copies of Share certificates for audit verification (**Annex 5**)

Observation

While the explanation offered by the management was satisfactory, the Committee took issue with the failure by the management to supply the required documentation at the time of audit.

Recommendations

- a) The Management of the Company must put in place a proper record management system where records should be stored in a secure and organized manner that enables easy retrieval when needed.
- b) The Management of the Company should always supply all documentation for audit review in line with provisions of Section 9(1e) of the Public Audit Act, 2015 which gives the Auditor-General powers of unrestricted access to all books, records, returns, reports, electronic or otherwise and other documents of entities.

3.0 Non-Compliance with Non-Revenue Water Guidelines

Review of records indicate that the company produced 4,673,711 cubic meters (M³) of water, of which only 2,161,237 M³ was billed to customers leaving out the balance of 2,512,474 M³ unbilled representing 53% of the production as Non-Revenue Water (NRW). The NRW exceeded the set threshold of 25% as approved by the Water Services Regulatory (WASREB) guidelines. No explanations have been given for the high NRW and measures being put in place to comply with guidelines. Consequently, the Company is in breach of the law.

Management response

The management submitted that the high non-revenue water reported is attributed to both technical and commercial losses. Technical losses include visible and non-visible leaks and bursts due to aging infrastructure which were inherited from the mother Agency. Whereas commercial losses are due to illegal consumptions, flat rated consumers and malfunctioning meters. However the company has put in place measures including:

- (i) Replacement of aging infrastructure with high density pipes (HDPE) totaling to 15km.
- (ii) Replacement of some faulty and aged meters and metering unmetered consumers.
- (iii) Procurement Ultrasonic Flow Meter (UFM) to address underground leakages.

It was further submitted, the County Government of Bomet on behalf of the Company has entered an MOU with State Ministry of Water to address issue of Non-Revenue Water as part of revenue enhancement measures which is expected to ensure 100% metering. The management also availed copies of work plans on replacement for 2021 and 2022.

Committee observation

The committee observed that the response was not satisfactory since there was neither clear timelines set nor financial resources set aside for ensuring that the issue of high Non-Revenue Water is dealt with. It was further observed that as at May, 2023 Non-Revenue Water stood at 66%.

Committee Recommendation

The Committee recommends that the management of the company must put in place clear strategies to mitigate water losses within three months upon adoption of this report by the Assembly.