

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 2020

SEPTEMBER, 2023

④ Clerk
Approved for
tabling
[Signature]
26/09/2023.

① Hon. Speaker
You may approve
for tabling



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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

UFM Ultrasonic 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 2020.

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 2019 to 30th June 2020. 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 the Use of Public Resources
- c) Report on the 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 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.**

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-

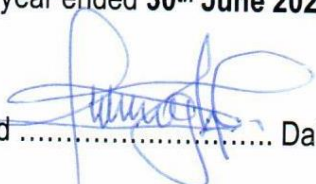
- a) contravenes or fails to comply with this Act or any regulation in force;
- b) undermines any financial management procedures or controls;

- 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

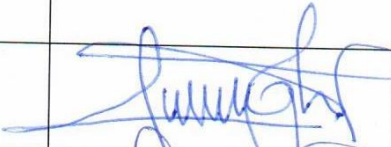



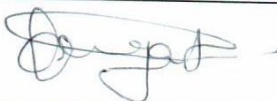


I wish to take this opportunity to thank the Honourable Members for their hard work and commitment which made the taking of evidence and preparation of this report successful. It is my pleasant duty and privilege, on behalf of the County Public Investment and Accounts Committee, to present this report on the Report of the Auditor-General on Bomet Water Company Limited for the year ended **30th June 2020** for debate and consideration.

Signed  Date 26/09/2023

Hon. Charles Langat, MCA
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 ENDED 30TH JUNE, 2020

2.1 Introduction

The County Assembly of Bomet received the Auditor-General's report 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, the Managing Director of the Company, and other witnesses to respond and testify to and on all the audit queries raised in respect of the Financial Operations of the Company for the Year ended 30th June 2020.

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.

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 the County Executive which comprise the statement of financial position as of 30th June 2020, 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 Long Outstanding Trade and Other Receivables

The statement of financial position reflects the trade and other receivables balance of Kshs.219, 486,725 and as disclosed under Note 15 to the financial statements. Included in

the balance are long outstanding receivables of Kshs.183, 360,072 or 85% owed by customers whose debts have remained uncollected for a period of over 90 days as at 30 June 2020. This debt continues to grow from year to year thereby affecting the company's working capital and raising doubts to its collectability.

Further, provision for bad and doubtful debts has not been reflected in the statement of comprehensive income and the management has not put in any measures to ensure that all the debts it is owed are collected, recovered or accounted for implying inefficient debt collection systems.

Management response

The management submitted that: - the Company had outstanding Trade and other receivables of Kshs 219, 486,725 which rose from Kshs 169,084,677 occasioned by Ministerial directive on non-disconnection of Water Supply to customers due to the outbreak of Covid-19.

Furthermore, the accounting officer stated that included in the balance of Kshs 219,486,725 was an amount owed to the County by the Kericho County Government of Kshs 37,445,341. He further stated that is true that there was no provision for bad and doubtful debts at the time of audit and they will comply with IFRS 9 (International Financial Reporting Standards 9) and Commercial policy in the current financial year 2022-2023.

The management further submitted a copy of Ministerial directive on non-disconnection of water Supply (**Annex 1(a)**), a copy of Ledger Report for Kericho County (**Annex 1(b)**), and a copy of approved commercial policies, procedures, and operational manual (CPPM) (**Annex 1(c)**) for audit verifications.

Committee observation

The Committee was concerned that management of the company did not have a clear plan on how long outstanding trade receivables particularly owed by the customers will be collected. It was also noted that as April, 2023 the amount owed to the company had risen to Kshs 203 Million. The committee was not satisfied with the response and thus this matter is marked as unresolved.

Committee Recommendation.

The Committee recommends that the Auditor General should undertake a special audit on this issue since this is the most significant aspect affecting the turnover and health of the Company.

2.0. Trade and Other Payables

The statement of financial position reflects **Kshs 92,005,784** for trade and other payables. However, the balance included long outstanding payables amounting to Kshs 38,388,425 owed to other water agencies/bodies as detailed below;

1. Lake Victoria South Waterworks Development Agency –**Kshs 8,241,949**
2. Water Resources Management Authority-**Kshs 4,686,671**

3. Water Services Regulatory Board- **Kshs 7,201,442**
4. Other payables-**Kshs 18,258,363**

Management response

The Accounting Officer submitted that: - the long outstanding trade and other payables of Kshs 38,388,425 were caused by cash flow challenges occasioned by Government directive on non-water disconnection due to the outbreak of Covid-19. He also stated that the management has so far reduced payables and is committed to settling the outstanding debts once the company is back to its stable financial position. Finally, the accounting officer averred that the Company has paid LVSWWDA a total of Kshs 756,000, WARMA 915,491, WASREB Kshs 200,000, and cleared outstanding KPLC Electricity bills of Kshs 29,221,612.

The management further submitted copies of payments schedule made to LVSWWDA, WARMA, and WASREB & KPLC (Annex 2) for audit verification.

Committee observation

The Committee was not satisfied with the response by the management and further noted that failure to settle long outstanding debts negatively affected the operations of the company was indicative of poor management.

Committee Recommendation.

The Committee recommends that the management of the company must put in place clear strategies including timelines on debt collection **within one month** of adoption of this report. The Committee was satisfied with the response and the matter was marked as resolved.

3.0 Unsupported Inherited Community Loan

The statement of financial position as at 30 June, 2020 reflects non-current liabilities of Ksh.443, 373 in respect of Kamureito Water Project Loan. The balance represents a community loan obtained from a Bank as per the letter of offer dated 19 December 2014 and taken over by the Company. However, the loan was supported by deed of transfer and no documents were provided to clarify the circumstances under which the water company took over the community project loan. Further, the loan has taken too long to be settled and is in arrears since the company stopped remitting repayments in July 2017. The management also did not provide any reason or explanation for failure to settle the loan and consequently, it continues to attract interest at 18.5% per annum.

In the circumstances, the validity and accuracy of the Kamureito water project loan balance of Kshs 443,373 as at 30 June, 2020 could not be confirmed

Management response

The Accounting Officer submitted that 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 MIN NO1/3/2013, hence the assets and liabilities relating to the project were passed over to the company.

He further stated that it is true that 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 a provision of Kshs. 750,000 inclusive of accrued interest in the current year.

Finally, the accounting officer indicated that the validity and accuracy of the outstanding loan balance of Kshs. 443,373 for Kamureito water project as at 30th June, 2020, can be confirmed by loan repayment schedule and bank agreement dated April 2017.

Copies of minutes of take over MIN NO1/3/2013 (**Annex 3(a)**), approved budget 2022-2023 (**Annex 3(b)**), the loan repayment schedule and bank agreement dated April 2017 (**Annex 3(c)**) for audit Verification.

Committee observation

The Committee was concerned that failure by the Company to service the loans with regards to the project inherited from the 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 loans 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 THE LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1.0 Unremitted Salary Deductions

Note 17 to the financial statements discloses staff salaries deductions and June, 2020 salaries of **Kshs.21, 702,761**. Of this amount, **Kshs.18, 416,098.50** relates to deductions not remitted to Lap Trust from March 2018. The Company is therefore exposed to the risk of incurring penalties and litigation with the continued delay in remitting the deductions when they fall due. This is contrary to Section 19 (4) of the Employment Act 2007 which requires an employer who deducts an amount from an employee's remuneration to pay the amount so deducted in accordance with the time period and other requirements specified in the law. To the extent, the Company is in breach of the law.

Management response

The Accounting Officer submitted that during the year under review the company had unremitted statutory deduction of Kshs 21,702,761 as of 30th June 2020. That this was occasioned by the cash flow challenges faced by the Company related to default payments by our major customers that include Kericho County government which owed the company **Kshs 37,445,341**.

The Accounting officer also stated that 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 covering the period up to October 2018.

The management further submitted a copy of payment of Kshs. **6M** to LAPTRUST for audit Verification (**Annex 4**).

Committee observation

The committee observed;

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

2.0 Excessive Wage Bill

The Company incurred an expenditure of **Kshs. 86, 455,624** on staff costs representing fifty-nine percent (59%) of the Company's total operational costs of **Kshs.146, 086,920**. This is contrary to paragraph 3.15 of the Model Human Resource Policy and Procedures Manual for Water Service Providers by WASREB which prescribes that in determining the staff establishment, the Water Service Provider shall be guided by WASREB sector benchmarks on personnel expenditures as a percentage of total operation costs. The management has explained that the high wage bill has been caused by the recruitment of more staff during the year under review hence no efforts appear to have been made to check the wage bill.

Management response

The Accounting Officer submitted that WASREB guideline as per paragraph 3.15 of the Model Human Resource Policy and Procedures Manual for Water Service Providers by WASREB of staff levels is 7-11 staff for every 1000 connections.

Further, the personnel expenditure as per the percentage of O&M costs is at 38 % (83,655,611/222,455,611) which is within the sector benchmark of 40% for medium companies.

The number of customers' connections then was 20,000. This implies that the company optimal personnel should be $20000 \times 11 / 1000 = 220$ staff against 204 at the time of audit.

Finally, the accounting officer indicated that in order to manage wage bill, the company has suspended recruitment to replace those who exit the company on retirement and non-renewal of staff on contract.

The management submitted a copy of WASREB impact report issue no 13 page 39 (**Annex 5**) for audit Verification.

Observation

The Committee was concerned that even though the company staffing was within the WASREB guidelines, the performance of the company in terms of revenue collection had deteriorated beyond unimaginable levels. It is very apparent that the company recruited without adherence to its staff needs resulting in a bloated wage bill which has seriously affected the performance of the company.

Recommendations

It is recommended that the management should undertake the following initiatives within six months after the adoption of this report;

- a) Staff rationalization and optimization
- b) Introduce performance contracts and appraisal

3.0 Non-Revenue Water

Available records indicate that the Company produced 5,119,519 cubic meters (M³) of water, of which only 2,180,915 M³ were billed to customers leaving out the balance of 2,938,604 M³ unbilled representing 57% 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.

Management response

The Accounting Officer 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 contribute to NRW. To address the above challenges, the accounting officer indicated that the Company initiated replacement of old and dilapidated PVC pipelines with HDPE network in Bomet town Silent line-3km, Sergutiet Line-5km and Boito raising main-4km in the FY 2020. These are capital-intensive measures and the County Government through the Department of Water is in the process of replacing other networks taken over by the company by procuring more water meters which has been factored in the current financial year budget 2022-2023 and so far they have procured 1000 smart water meters at a total cost of Kshs 19,934,650.

Finally, the Accounting Officer stated that the County Government of Bomet on behalf of the Water Company has entered an MOU with State Ministry of Water to address issue of Non-Revenue Water as part of revenue enhancement measures. This will ensure 100% metering.

A copy of Pictorial evidence of ongoing meter replacements have been availed for audit Verification (**Annex 6**).

Committee observation

The committee observed that the response was not satisfactory since there were 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 of 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 the adoption of this report by the Assembly.

4.0 Unmetered Connections

Billing records for the year ended 30 June 2020 revealed that an average of seven hundred and fifty-six (756) Customers had water connections without meters and were billed on average consumptions. Although Kshs.6, 759,255 was realized as revenue from these customers translating to 5% of the total sales, billing of customers without meters could result in possible loss of water hence a high percentage of Non-Revenue Water.

Management response

The Accounting Officer submitted that unmetered connections were due to malfunctioning water meters. However, the Company has procured and installed all the 756 customers who were under flat rate with pre-paid meters leading to non-revenue water.

A copy of list of customers metered (**Annex 7**) was availed for audit Verification.

Committee observation

The committee observed that the response given was not satisfactory. The management submitted a list of customers purported to have been metered as indicated in Annex 7. The list provided is unverifiable and upon further investigation, the committee noted that the list provided was misleading. This matter is thus marked as resolved.

Committee Recommendation

It is very evident that the management is not giving this issue the necessary attention and the Committee recommends that a special inquiry be undertaken on this matter.

5.0 Stalled Chebunyo–Siongiroi Water Project

The statement of financial position reflects non-current assets balance of Kshs. 47,592,817. Included in this balance is Kshs.17, 573,015 for Chebunyo – Siongiroi Water Project financed by grant from Water Sector Trust Fund (WSTF) during the financial year 2015/2016 for the construction of a water supply extension to connect the Chepalungu area from Moi Girls - Siongiroi water distribution point. Payment documents indicate that the total grant amount of

Kshs.17, 573,015 had been paid. However, the project failed to take off during the test run on completion due to low water volumes/levels at the in-take.

The feasibility study documents on the project have not been availed for audit to establish whether the project was confirmed viable and a site inspection visit carried out in the month of January 2020 noted that the site has since been abandoned.

Management response

The Accounting officer submitted that the hydrological report for the proposed water source shows that there would be sufficient water to serve the entire area without affecting downstream users. The hydrological report has been availed for audit verification.

The Accounting Officer also averred that indeed It is true that Kshs. 17,573,015 was utilized to construct an extension line from Siongiroi to Chebunyo, funded by WSTF in FY 2015/16 and the project being a multiyear project was supposed to have a direct line to connect from Sigor intake works to Siongiroi with funding from the county. However, due to financial challenges, it was not completed on time, but currently it is at 95% completion and expected to be operational before the end of the financial Year 2022-2023.

Copies of hydrogeological report (**Annex 8(a)**) Budget for 2020/2021 and 2022/2023 with status progress report (**Annex 8 (b)**) were availed for audit Verification.

Committee observation

The committee observed that the response by the management was unsatisfactory and contained false and unverifiable information. The Committee undertook a site visit to site of the project and confirmed the salient issues noted by the Auditor General. The committee observed that the water project is unfunctional due to low water volume at the intake as noted by the Auditor General. Furthermore, the committee noted that some of the facilities of the project have been vandalized especially in Chebunyo Market.

The Committee makes the following additional observations;

- a. The submission by the accounting officer that the project will be operational towards the end of the financial year 2022/2023 is misleading and false since the committee visited the project location on the stated period and confirmed the contrary. There was no significant activity taking place that justified that the project would be complete towards the end of the Financial Year 2022/2023.
- b. The Committee observed that the hydrological survey undertaken is questionable. This is because the hydrological report indicates that the project would be sustainable but upon verification and as indicated by the auditor general, the project failed to take off due to low water volume at the intake.

Committee Recommendation

Based on the stated observations, the committee recommends that further inquiry and investigation be undertaken within three months to establish the real issues affecting the current circumstances of the project and how the same can be revived to serve the residents of the County.