

Traffic Offences Graft: A Case for Instant Fines

By Francis Meja:

During a recent surprise visit to the Kibera Law Courts, the Chief Justice, Willy Mutunga, unearthed a massive corruption scam in the Traffic Court whereby unscrupulous officials mint millions of shillings from traffic offenders.

The impromptu investigation revealed that in cases involving minor traffic offences there were numerous instances of bribery, parallel receipting for fines, case backlogs and delays in the court process. This has resulted in the Government constantly losing out on revenue that rightfully belongs to it.

In order to put these state of affairs into perspective an analysis of the Traffic Act has to be done. The Act creates various traffic offences and applicable penalties, however it does not provide for fixed or statutory fines. Needless to say, it provides a maximum amount and thus the applicable fine is left to the particular magistrate's discretion.

As a result of the exercise of this discretion, the amount of fines or penalties payable vary from one incident to the next, leading to uncertainty and development of perceptions among the public of unfairness and "elasticity of justice."

Further due to the high frequency of minor traffic offences, courts expend a lot of time and resources prosecuting minor offences.

Similarly a lot of time is also wasted by offenders and the police who have to appear before court. It is not uncommon for an offender to spend an entire morning at the Law Courts only to be slapped with a fine of just Sh500 for a minor offence.

The end result is the wastage of valuable man hours for all parties involved which could be better deployed in more productive national development endeavors.

The other major inconvenience to offenders is the public stigma and public embarrassment attached to a court appearance for a minor offence.

This and a litany of other inconveniences, is a major motivation for the quest for quick fix solutions such as issuing bribes to avoid an arrest and the subsequent court process.

The collection and administration of fines is another area which raises concerns. The process is entirely manual which leads to revenue leakage through the existence of parallel receipting among others.

The National Transport and Safety Authority (NTSA), has stridently and consistently advocated for amendments to the Traffic Act to provide for an instant fine system, a view that is shared by the Judiciary and National Police. However we are cognizant that such amendments shall take a considerable amount of time as they have to go through a potentially long-drawn legislative process. This notwithstanding the amendment of the Traffic Act to incorporate instant fines is a long term solution to the problem which the NTSA is actively pursuing.

As an interim measure which can be achieved in the short term, the NTSA is in the process of amending Section 117 of the Traffic Act which empowers the Cabinet Secretary to prepare a schedule of minor traffic offences and prescribe a statutory penalty. Simply put, this means that the Cabinet Secretary shall list the common minor offences in a schedule and the corresponding fixed fine provided that such fine does not exceed what the Traffic Act prescribes as the maximum amount.

To operationalize the use of the schedule of minor offences, the NTSA is in the process of amending the police notification of traffic offence form to provide for the payment of fines for those who plead guilty through the current payment technologies such as mobile or electronic payment systems.

Further the NTSA is in consultation with the Judiciary and the Police to provide for a fixed amount for bail that corresponds to the statutory penalty in the schedule in order to provide for an instant bail payment system for those who deny the charges.

This process would be convenient, cost-efficient and transparent for all the parties involved which will materially dis-incentivize corruption. It is also easy to automate, which will spawn greater revenue assurance.

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