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# **Emergent Patterns on the use of the Fine as Sanction for Traffic Violations; Evidence from Drivers of Public Service Vehicles in Kenya**

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## **Abstract<sup>1</sup>**

All people are affected by the design of systems of penal sanction, every nation state in this world uses fines as a possible punishment for breaking the law.

Penal sanctions in general should meet at least the following objectives; retribution, deterrence, rehabilitation, community protection, denunciation, and restorative justice. This study has explored the extent to which penal sanctions meet any (if not all) of the sentencing objectives. Using evidence from selected drivers of Public Service Vehicles (PSVs) in Kenya, this study describes the extent of use of the fine and emergent shifts in behavior. The findings show that the fine is most used for traffic violations even though there wasn't evidence of behavior change towards conformity. The study concludes that while the fine may be meeting other objectives such as retribution, on deterrence and rehabilitation, this was/is not the case.

**Keywords:** design for all, fine, sanction, retribution, deterrence, rehabilitation, denunciation, restorative justice, community protection

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## **Introduction**

**Several forms of criminal sanctions exist but none is as ubiquitous as the fine. Whereas Bögelein (2018) and Hillman et al., (1984) have pointed towards the common use of the fine as a criminal sanction, little is known about its level of use and efficacy in regulating traffic offences among drivers of public service vehicles (PSVs) in Kenya. The fine is a form of pecuniary punishment and obligation that is ordered by a court of competent jurisdiction to be paid by a defendant as a penalty for his unlawful actions (Azisa and Arifin, 2022; King,1995). The argument in this paper is that there are gaps while one seeks to comprehensively determine the level of use of the fine and its effectiveness in regulating traffic offences.**

**Deterrence is arguably the dominant goal of criminal justice system. The various forms of punishment must be designed to achieve the deterrence objective in a cost-effective manner (Reznichenko, 2015). As Reznichenko (2015) suggests, the fine is an appropriate intermediate sanction that meets the cost function. Additionally, the flexibility of its use makes its usability by judicial officers, particularly within the public transport sector, realistic. As to whether it has succeeded in achieving deterrence and ensured adherence to traffic laws and regulations must be clearly determined.**

**To begin with, Cole et al., (1987) established that there is a highly positive inclination of judges and magistrates towards the use of the fine in general. While this did not reflect their sentencing practices per se, it is an indication of the likelihood of the fine being unanimously applied. The concern of effectiveness**

of the fine has also been raised by Hastono, (2023) among narcotic traffickers.

Nagin (2013) observes that despite its commonness, the fine has been the least of focus in terms of research. As such, it continues to be practiced without sound criminological theory. Consequently, the fine may evade the objectives that are met by other forms of criminal sanctions like imprisonment that has continued to attract research anchored on theories (Von Hirsche et al 1998). The use of the fine in traffic offences in particular continue to be the norm despite lack of empirical evidence to its effectiveness (Atkinson, 2016; Burns and Lynch, 2002).

Caramichael et al., (2018) note that fines as practiced in most jurisdictions have only expanded economic sanctions and increased the creativity of police officers and court officials who have been reduced to mere tax collectors for the government rather than serving as justice officials. This has given government officials new incentives to issue as many citations and fines regardless of the severity of the offense. Such revenue driven justice systems can result in abuse particularly when raising funds replaces public safety as the primary objective of law enforcement.

In Kenya, the fine is one of the penal sanctions often imposed by courts once an accused person has pleaded guilty or has been convicted of an offense following a fair hearing, (Art. 50 of the Kenyan Constitution and section 24 of the Penal Code). The Traffic Act is the statute law that is applied by criminal justice

practitioners in the enforcement of traffic rules and regulations. As part of enforcing the act and other traffic regulations, the National Transport and Safety Authority (NTSA) often publishes a schedule of fines for minor traffic violations. However, despite making the fines public, violations of traffic offences have continued to be reported across the country; particularly from public sector drivers ([Manyara, 2016](#)).

According to Chitere and Kibua (2004), in an effort by government to improve on the safety of road users in Kenya, legal notice no. 161 of 2003 (famously known as Michuki rules) was passed to help sanitize the *matatu* sector who are the major players in the urban transport sector. (are privately owned vans and buses that dominate the mass transport sector.) Moreover, traffic police were thus required to enforce the legal notice and the traffic act cap 403 laws of Kenya and also examine PSV (Public Service Vehicle) drivers. Yet, the challenges of ill equipment, impracticality of some laws as well as massive corruption were major pitfalls towards adherence to traffic rules.

The instant fining system which was introduced in 2016 continues to face challenges and criticisms and has been suspended in most parts in Kenya. Some of the challenges included the urge on members of the public to always plead guilty to a traffic charge to avoid the long processes of justice (Criminal Justice System Audit, 2016).

According to the Criminal Justice System Audit (CJS) 2016, of the guilty verdicts that were registered and imposed by the courts at the magistrates' level in the Republic of Kenya (53%), the most

common of punishments was the fine and or imprisonment that constituted 49%, (NCAJ, 2016). Overall, the fine was applied in 51.5% of the cases (Fines only, Fine or CSO and Fine and or Imprisonment). Imprisonment alone was applied in 20% of the cases, CSO was 19% and probation 7%. About 4% of the sentences used were Death (0.11%), suspended sentence (0.56%), committal to school (1.26%) and repatriation (0.13%). The table 1 below shows a summary of the various sentences that were instituted by the magistrate courts in Kenya between the year 2013 and 2014.

Sentence	Frequency	Percentage	Cumulative
<b>Fines Only</b>	444	5.4	5.4
<b>Fines or CSO</b>	27	0.4	5.8
<b>Fines and Imprisonment</b>	7786	94.3	100.1
<b>Total</b>	8257	100	100.1
<b>Other Sentencing Options</b>			
<b>Imprisonment</b>	3222	42.0	42.0
<b>CSO</b>	3059	39.8	81.8
<b>Probation</b>	1072	14.0	95.8
<b>Committal to a school</b>	201	2.6	98.4
<b>Suspended Sentence</b>	89	1.2	99.6
<b>Repatriation</b>	20	0.3	99.9
<b>Death</b>	18	0.2	100.1
<b>Total</b>	7681	100.1	

*Table 1: Sentences in the Magistrates' Courts, by Type of Sentence, 2013-2014  
Source; NCAJ, 2016.*

According to a report by the National Council of Administrative Justice (NCAJ, 2016), the fine is the second most used form of punishment for both criminal and civil matters. However, despite its wide use, the incidence of traffic violations are on the rise. According to the Annual Crime Report (2018) by

the National Police Service, there were a total of 5,188 cases of road traffic accidents in 2018 as compared to 4,456 cases in 2017 which was an increase of 732 cases or 16 %. The leading violations were also identified as overloading, drunk driving, speeding, wrong use of the road by pedestrians, poor roads infrastructure and non-observance of traffic laws, most of which would attract the fine as a sanction. Whether the fine meets the objectives of punishment as stipulated by Kenya Sentencing Policy Guidelines (2016) may be in doubt ([Mbori, 2017](#)).

The varying amount of the fine is also another concern. Judicial officers in Kenya exercise discretion in order to consider a suitable sentence within the law (Akech and Kameri-Mbote, 2012). However, it is this discretion that generates vagueness, lack of clarity and disproportionality in the way in which the fine is used. It is because of this that the role of the fine may be elusive (Mbori, 2017 and Austin, 2005).

Bentham, (1983 as cited in O'Malley, (2009) argued for a departure to pecuniary form of punishment. He had observed that monetary sanctions are the way for liberal states in their practice of criminal sanctions. The rationale for punishment would no longer be to reduce the pleasure and increase the pain but rather removing the pleasure altogether. According to Bentham (cited in O' Malley, 2009), the fine is deficient of physical coercion, physical pain, easily reversible and thus can be measured in proportions. As such, O' Malley (2009) posits that rather than relying on Beccaria's old propositions (punishment be swift, sharp, fast) the pecuniary forms of punishment should be the subject of inquiry and

practice across the modern fining system. This is because, according to the National Criminal Justice Reference Service, (Sally, Sichel & Mahoney, 1984), fines are widely used as criminal sanctions and are not confined to traffic offenses and minor ordinance violations only. The fine allows for broad use of punishment but is still able to sustain the feeling that the fine is less costly than custody or probation. Moreover, it constitutes meaningful punishment and deterrence for legal persons like corporations and companies.

## **Methodology**

This study was conducted in Nairobi City County at major PSV termini namely; Koja, Country bus station, Bus station, and Railways. Secondary data on prosecuted traffic cases was gathered from Makadara Law Courts. Nairobi County is one of the 47 counties in Kenya and is the capital city. The PSV sector in Nairobi controls nearly 80% of transport in the city (King’oina, 2010).

The choice of the termini was informed by the huge number of PSV operators in those spaces increasing the probability of getting drivers who have been fined. Makadara Law Courts was selected for the study because of the frequency of handling the majority of traffic offences that occur within the selected termini.

## **Research Design**

A descriptive design was used in this study. This design also allowed the researcher to determine the characteristics, frequencies and the trends of the fine. The study target population was the PSV drivers who have been fined in Kenya.



## ***Sampling Procedure***

The study used snowball sampling technique to recruit PSV drivers who had been arrested and fined in the past 6 months. Secondly, purposive sampling was used to select key informants (magistrate, court clerk and the prosecutor) for the study. Data was gathered using questionnaires and interview schedules. Primary and secondary data were collected. Qualitative data was analyzed thematically based on the objectives of the study, summarized and presented as findings. SPSS program was used to process quantitative data which was presented in the form of tables, frequencies, pictorials, histograms and pie-charts.

## **Results and Discussion**

The level of use of the Fine in Regulating Traffic Offences Analysis of secondary data gathered from Makadara Law Courts Traffic Division records for the first half year period of 2017, 2018 and 2019 showed that the fines was the most used form of sanction against traffic related offences. This confirms the NCAJ 2016 report that fine is the most used form of sanction. Table 5 summarizes the data for the period under study.

<b>Year</b>	<b>Number of drivers Fined</b>	<b>Percentage variation</b>	<b>Amounts</b>
<b>2017</b>	988	-	4,541,400
<b>2018</b>	980	(0.8)	8,224,400
<b>2019</b>	1012	2.4	12,802,600

***Table 4: Number of Drivers fined and Amounts  
Source; Research data, 2019***

During the period under determination, the number of fined drivers increased between the first half of the year 2017 and 2019 by 2.4%. This is indicative of the increased use of the fine. The amounts of the fine collected within the period under determination equally increased. Between the first half year of 2017 and 2018, the amount collected nearly doubled showing an increase of 81.1%. Interestingly, the number of drivers who were fined had dropped by 0.8% within the same period. It was deduced that that the fine amounts were so high that despite having a drop in the number of drivers who were fined, the amounts of fine collected had increased by 81.1%. This shows that there was increased use of the fine for traffic violations.

Additionally, the number of drivers fined for traffic violations increased in the half year period of 2019. In the same period, the amount of fine money collected also increased by 55.7% compared to the same period in the year 2018. According to key informant interview with the magistrate at Makadara Law Courts, he observed that:

*"The fine as used in Kenya addresses in addition to the deterrence objective, the revenue needs of the government. Imprisonment may seem appropriate but it also has its challenges. The fine ensures that our prison population does not burst. The only problem that needs to be checked is the instance of bribery and corruption that arise between CJS officials and the offenders."*

## The Extent to which the Fine Influences Behavior Change

To ascertain the extent to which the fine influence behavior-change among fined drivers, the respondents in the study were asked several questions to establish this objective as discussed below.

Offence committed and Fine Amounts Charged; Table 5 below summarizes the finding to this inquiry.

Traffic Violation	Amounts (KShs)	
	Maximum	Minimum
Failing to display badge	5,000	5,000
Failing to Wear PSV uniform	10,000	5,000
Changing lanes at round about	10,000	5,000
Picking passenger at unauthorized place	10,000	10,000
Failing to display insurance certificate	15,000	15,000
Careless driving	20,000	5,000
Exceeding speed limit	20,000	5,000
Obstruction	20,000	5,000
Driving motor vehicle with parts hanging	20,000	10,000
Allowing to carry excess passenger	20,000	10,000
Overlapping	20,000	20,000
Dangerous overtaking	30,000	10,000
Failing to obey direction given by police in uniform	30,000	20,000
<b>Total</b>	<b>230000</b>	<b>125000</b>

**Table 5: Offence committed and Fine Amounts Charged**  
*Source Research data, 2019*

The study found out the most common traffic offences for which various fines were applied. Further revealed was that there was variation in terms of the fine amounts for individual traffic violation. The findings further showed that the offence of failing to obey the direction given by a police officer in uniform attracted the highest fine amount of between Kshs. 20000 (minimum) and Kshs. 30000 (maximum) while failing to display a badge attracted a constant fine of Kshs. 5000.

According to the magistrate, the variation on the fine is necessitated by several factors. He observed that:

*"We also consider the plight of the public. When we hear of PSV menace at some stage or on certain routes within our jurisdiction, we penalize the offenders at the maximum set fine base for the offence. Such information can reach us through the police or the prosecutor. We serve to bring sanity by punishing violators of rules at that point in time painfully."*

This explains certain circumstances that the fine is perceived as high for even infractions committed by drivers.

#### **How the Drivers raised the fine and Their Fine Experience**

The source of the fine money for the drivers is critical in establishing the link of the financial loss and their behavior change. The study established the various ways through which the fined drivers were able to raise the fine. This has been summarized in Table 6 below.

How Fine was raised	Number	Percent
Personal savings	28	38.9
Friends and relatives	14	19.4
Sacco management	12	16.7
Owner of the vehicle	10	13.9
Served time	8	11.1
Total	72	100

*Table 6: Source of Money for the fines Money Source; Research data, 2019*

From the table, 38.9% of drivers were able to raise the fine through their personal savings while 11.1% were unable to raise the fine and so they served time in jail. 19.4% of drivers were able to raise the fine through their friends and relatives.

Further analysis has shown that 50% of fined drivers solicited to fine money from others but themselves. These alternative sources included; friends and relatives (19.4%), Sacco management (16.7%), and owner of the vehicle (13.9%). As Bogelein (2018) argued, the fine as used in most jurisdictions fails to associate the individual offender and the fine sanction. As such, there is no association between the author of the offence and the fine raised and thus, the chances of repeating the offence are highly likely.

### **Time Taken to Raise the Fine**

The study further sort to establish the duration taken by fined drivers to raise the fine. Table 7 summarizes the finding.

Number of days taken	Number of Drivers	Percent
1	20	27.8
2	12	16.7
3	20	27.8
4	9	12.5
5	3	4.2
Served Time	8	11.1
Total	72	100.1

**Table 7: Duration taken to raise the Fine  
Source; Research data, 2019**

From the analysis in table 7 below, 72.3% of fined drivers were able to raise the fine between the first and the third day. This is indicative of the fines not being capable of producing the deterrence effect probably because they are low and so not "painful enough" to spur behavior change towards law adherence. However, as the days progressed, the number of those who were likely to raise the fine also reduced to 12.5 % and 4.2% for the fourth and fifth day respectively. After the fifth day, most fined drivers would be jailed to serve time and this represented 11.1%. According to the magistrate:

*"Most drivers are able to raise the fine within the first three days. Of course, this depends on a number of factors including the amount of the fine and the individuals' financial situation at that time. If they don't pay within the day, they are often remanded until they are able to raise the fine. Ordinarily the fine comes with an alternative punishment of imprisonment. So, the person starts to serve the prison sentence as his fine is processed. If they finish in a day, he is left to go. If they don't, he is sent to prison."*

The prosecutor reaffirmed that:

*“Nearly all of them are able to process the fine within three days. However, if they are not, the person will serve the alternative sentence which the magistrate had earlier indicated. After the first day, the fine amounts would be reduced by a certain percentage. This reducing balance basis is important in ensuring adherence among those who were yet to raise the amount.”*

### Incidence of Re-arrests

Instances of re-arrests may indicate that the first fine experience has not instituted deterrence and compliance to the traffic rules. Table 8 below shows the frequencies of re-arrests.

First Fining	Re-arrests	
	Yes	Percent (re-arrests)
72	35	48.6

**Table 8: Instances of Re-arrests**  
Source; Research data, 2019

From the table, 48.6% of drivers who had been fined in the last six months were arrested again. This is nearly 50% of drivers who had formally been sanctioned for a traffic violation was likely to be sanctioned again. It means that the fine paid is effective only to half of the offenders. As Bogelein (2018) argues, the fine is unable to smear the offender with disdain unlike other sentences such as imprisonment. Offenders who have been fined do not suffer the societal admonition which would equally play a critical role in their law adherence behavior.

Oevermann, (2001) pointed out that individuals in a given social group (e.g. PSV drivers) often mobilize a common sense of understanding a phenomenon in order to reduce the complexities that may come with the realities of certain experiences. It is such commonalities that are used to structure and explain daily routines and actions rather than to pursue individual reasons and rationalizations.

<i>The fine Promotes adherence to traffic rules</i>	<i>Number</i>	<i>Percent</i>
<i>Not Sure</i>	<i>9</i>	<i>12.5</i>
<i>Yes</i>	<i>26</i>	<i>36.1</i>
<i>No</i>	<i>37</i>	<i>51.4</i>
<i>Total</i>	<i>72</i>	<i>100</i>

*Table 9: The fine and Adherence to Traffic rules  
Source; Research data, 2019*

From table 9 above, 51.4% of fined drivers indicated that the fine does not have any impact with regards to whether they adhere to traffic rules in the future. Only 12.5% of fined drivers indicated that the effect of the fine is always dependent on the driver and the circumstances of his arrest.

## **The Fine and Behavior Change**

In addition to other indicators that the study established, the influence of the fine on behavior of the drivers was determined from a gender lens. Table 10 below summarizes the findings:



Gender	The fine Influences Behavior Change		Total
	Yes	No	
Male	6 (8.3%)	63 (87.5%)	69
Female	-	3 (4.2%)	3
Total	6 (8.3%)	66 (91.7%)	72

*Table 10: Influence of the fine on Behavior Change  
Source; Research data, 2019*

The findings show that only 6 out of 72 PSV drivers indicated that fining helps in behavior change. This is about 8.3% of the total respondents. 91.67% observed that behavior cannot be changed by a monetary form of punishment. This agrees with the observations of Simmel (cited in Bogelein, 2018) that modern societies generally perceive of the world in numerical lenses and thus numbers may be used to reduce the harm of the offence by perceiving it purely in financial terms. However, there are certain aspects that can be changed by enforcing monetary sanctions. One such area is the behavior of individuals.

The study thus concludes that the fine does not influence behavior change among fined PSV drivers (91.67%). The influence or the fine on behavior thus minimal (8.3%). This study is an example of the usefulness of the design perspective in considering, studying and analyzing large scale behaviours and the remedial interventions for lawbreaking which can also include endangerment of individuals and the public in general. Treating the system of penal sanctions as a form of design enables planners to understand the 'why?' question in lawbreaking

**behaviour. It also helps in the testing and trial of changes to existing systems that may not be achieving the desired results of behaviour change.**

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