



Efficacy of the Legal Mechanisms That Has Been Put in Place to Combat Lawlessness in Public Transport Sector in Kenya

Kingori Florence

EasyChair preprints are intended for rapid dissemination of research results and are integrated with the rest of EasyChair.

October 3, 2022

EFFICACY OF THE LEGAL MECHANISMS THAT HAS BEEN PUT IN PLACE TO COMBAT LAWLESSNESS IN PUBLIC TRANSPORT SECTOR IN KENYA.

THEME: CROSS CUTTING AND EMERGING ISSUES

Globally in Asia, public transport is mostly used as means of transport and their policies are well laid out, in North America its used for mass transit as they are given funds by their government whereby, they charge a fixed rate. There is an international network which is under public transport authorities which has mandated International Association of Public Trust (IAPT) with making of policy decisions, its members are 3,400 in number composed of 92 countries. Lawlessness is a major problem within the public transport industry, in Kenya they are used as the main means of transport 70% of the transportation, involve buses, matatus, and motorcycles that uses paratransit mode therefore they are of very importance towards the economic development. This industry requires an effective law to facilitate efficient operations. This study concerns the lawlessness that is experienced in the operations of the public transport in Kenya. Major objective of carrying out this research are to assess the efficacy of the legal mechanisms that has been put in place, The theories are traffic flow to elaborate what exactly happens during pick hours and less congested hours, lawlessness theory to show how insanity and crime cripple in this industry. The methodology applied is Doctrinal that involves the literature review in library books, statutes and other secondary data materials, whereas the design it includes content Analysis which involves documents and communication facts relational analysis it used in computational serving in to help discover the relationship that is between independent variable and dependent variable. study recommends the implementation of the road traffic regulations and expansion of offices at all county levels with adequate human resources and also registration of drivers at the national level as well as promoting awareness on the importance of road safety.

1.0 Introduction

The study, provides information on available laws, policies, and regulations that govern traffic related issues, in order to identify the existing gaps, possible causes of lawlessness in traffic matters, and provide recommendations on how the identified gaps can be addressed

The regulation of public transport services through licensing mostly emphasis on the quantitative control of the market and pays less attention to the improvement of quality services. due to the large number of incidents of violation of traffic laws, enforcement agencies such as the police cannot cope with all such cases. For example, although traffic laws require vehicles to be inspected periodically, the government agencies responsible for undertaking the inspection usually do not have adequate staff or the necessary equipment and funds to conduct the inspection. Consequently, a large proportion of vehicles in the region does not fulfill this legal requirement. Because of this, a substantial percentage of the vehicles providing services are not roadworthy.

1.1 Research Objectives

1. Assessment of the efficacy of Traffic Act (Cap 403)

1.2 Research Questions.

1. What is the efficacy of the legal mechanisms put in place to combat lawlessness in public transport sector in Kenya?

1.3 Justifications

Disorder within public sector as earlier stated is responsible for numerous traffic accidents and rising cases of insecurity especially in urban areas. The government and other stakeholders have initiated various sectoral reforms directed at restoring law and order in the public transport sector. Despite these initiatives disorder still rules this sector. Institutions enacted have also failed to regulate the conduct in the transport sector.

This study is hence justified as it seeks to analyses traffic act and how proper implementation of the act could help restore sanity in the transport sector. This research will help the government and its agencies as the role of enforcement mainly lies with them.

1.4 Significances of the study

Public transport industry, in Kenya they are used as the main means of transport as they offer about 70% of the transportation they involve buses, matatus, and motorcycles that uses paratransit mode therefore they are of very importance towards the economic development. This industry therefore requires an effective law to facilitate efficient operations. This study concerns the lawlessness that is experienced in the operations of the public transport in Kenya. It will also inform readers and other researchers on the importance of maintaining an orderly transport sector cognizant of its role in economic development, in the words of former Transport Minister John Michuki “Moving a working nation.”

1.5 Scope of the Study

The researcher has focused on transport sector, which involves public means of transport. It analyses the Traffic Act and the specific role its provisions play in ensuring that there is order in the transport sector in Kenya. The study analyses the offences created by the act and the penalties provided to assess their effectiveness in deterring traffic laws related crimes as well as restoration of order on the streets and routes that the public utilize. Apart from the Traffic Act, National Transport Act, Safety Authority together with National Police Service Act; and County By-Law are laws that govern traffic control in Kenya.¹ Whereas the focus of this study is the Traffic Act, these other laws will also be mentioned in order to establish that lack of coordination is a factor in the anarchy witnessed in public transport industry in Kenya.

1.6 Assumptions of the Study

These are assumptions that are guiding this research:

- i. The traffic Act through its provisions provide sufficient safeguards to enhance order in the transport sector that have not been adequately implemented.

1.7 Empirical Literature Review

In Kenya the implementation of government strategies is basically under several government departments, these involves : The NTSA, RMV, Traffic Police officers, MVIU and Driving Test center².

1.7.1 Efficacy of the Traffic Act within the Public Transport Sector

The registration of the PSV and licensing of both drivers, conductors and motor vehicle is under Traffic Act (Cap 403), which is a regulatory Law since it focuses on the regulation of traffic on the road and it has to achieve its aim³. The Act also provides provisions that criminalize certain activities to foster proper use of roads as well as promote road safety for all road users irrespective of the means of movement.

1.7.2 Extent of lawlessness and its Impact to the Public Transport Sector

An environment of Anti-Social Activities

The matatu sector is usually dominated by unemployed youth that are mostly loitering or offering assistance⁴. With the general public there is always a decay that this sector is full of anti- social activities such as pickpocketing violence, drug trafficking and robbery especially if the stage is located in a place without good lightings. The grouping of cartels and the rank used by crews is a major factor affecting the regulation in Kenya.⁵ There is normally two well-known groups of workers in these stages. The first one is made of people who on their own, have organized themselves to be beckoning and convincing passengers in boarding the vehicles.

Usually, they don't have any contract with the owners of these vehicles, drivers or conductors, their work is to monopolize, and dominate stages together with the routes.⁶

¹ National Police Service Act

² Ngui S. K. (2014). Strategies for the implementation of traffic regulations within the public transport sector in Nairobi City County, Kenya.

³ Musyoka W, Criminal Law, Law Africa Publishing, 2013, 469.

⁴ Mathiu, M. (2019), Kaguthi must Run this Mafia out of the City in Sunday Nation (Nairobi), 24/1/1999.

⁵ Khayesi, M. (2019). The Struggle for Regulatory and Economic Sphere of Influence in the Matatu Means of Transport in Kenya: A Stakeholder Analysis Kenyatta University, Nairobi Kenya.

⁶ Mathiu, M. (2019), Kaguthi must Run this Mafia out of the City in Sunday Nation (Nairobi), 24/1/2019.

The other group it involves the owners of the matatus employees. They employ them with an aim to counter these unruly group as they try to manage the stages and they does almost the same work with the first group. Through the existence of these groups with their own strong interests that is made the genuine stage workers, owners and other stake holders it elaborates why they always have regular violence and misunderstanding in this industry.⁷ The conflicts may happen if a fleet of well-established matatus starts to operate on a rout invaded by others Organized fleet of matatus. Conductors versus the owners; it's also a conflict that erupts when the owners of those matatus decides to take over from them. In December 1998, there was a violent conflict that erupted in Nairobi at a stage in Railways where by one person was killed⁸, it happened when the stage operators had a confrontation while they were protesting and picketing against the police harassment as they demanded the bribes.⁹

1.7.3 Mechanisms that can combat lawlessness in Public Transport Sector

The matatu sector in Kenya has tried to upgrade trough transformation¹⁰, from the unregulated, chaotic that were being experienced to a well-organized and secure industry¹¹. This has tried to bring about sanity with remarkable achievements that has made them to attain some sort of decency and eliminate cartels in this sector who has been dominating it for long extorting money and forming. Government had put measures in need to start a new transport system through public funded Nyayo buses but it did not take effect due to the frustrations from cartels and corruption which made it difficult to manage.

However, it was characterized with infringement of traffic regulations, that resulted the experience of fatal accidents even deaths, whereby They seemed more of a curse than a blessing.

1.8. Theoretical framework

Traffic flow theory and Lawlessness theory sees natural experiments as an opportunity to test government and law as the connectors of social order. Some groups usually find themselves in a wide variety of situations that shows the responses of groups to their difficult times.

Due to the absent of laws some groups commitment to justice its normally depends on social order and this has led to implications especially in public transport and it has not been easy to wards the appropriate distributive for criminal liabilities and punishments thus this sector has turned as organized crime, therefore calling for the need of criminal adjudication and enforcement of policies under the Traffic Act in case of such occasions.¹²

1.8.1 Traffic flow theory

This traffic flow theory has been used in transportation engineering in the study of the travelers such as pedestrians, cyclists, drivers and even vehicles themselves this is done with

⁷ Khayesi, M. (2019). The Struggle for Regulatory and Economic Sphere of Influence in the Matatu Means of Transport in Kenya: A Stakeholder Analysis Kenyatta University, Nairobi Kenya.

⁸ Thuku, W. and Muiruri, S. (2018), City Stage Turns Deadly as Man Dies in Brawl: Matatu Crew Now Kill Guard, in Daily Nation (Nairobi), pg. 1, col. 1.

⁹ Khayesi, M. (2019). The Struggle for Regulatory and Economic Sphere of Influence in the Matatu Means of Transport in Kenya: A Stakeholder Analysis Kenyatta University, Nairobi Kenya.

¹⁰ Luchebeleli, S. (2019), City Mps, Matatu Men in Demo over Bus Plot, in The People Daily (Nairobi), 29 May 1999. Pg. 1, Col. 2.

¹¹ Ogonda, R. (2012), Post-Independence Trends in Development of Transport and Communications, in Ochieng W. R. and R. M. Maxon, eds., An Economic History of Kenya, Nairobi: East African Publishers.

¹² Neiss, Morgan (2015) "Does Public Transit Affect Crime? The Addition of a Bus Line in Cleveland," The Journal of Economics and Politics: Vol. 22 : Iss. 1 , Article 3

aim of developing and understanding the efficient of transport network and its movement during pick hours and also when the traffic congestion is minimal.¹³

Traffic flow its very complex to understand and manage especially during pick hours and with the congestion and thus due to individual reactions for example the drivers' vehicles usually do not follow the law of mechanics rather the show cluster depending on their density. The mathematics formular of traffic flow use of vertical queue whereby its assumed that if there is congestion, they don't get back in line of traffic. This theory is known to stream the speed flow how they relate since its usually focused with standing still traffic on the high ways and expressways¹⁴

If there is below twelve (12) cars in a mile of a traffic line no conditions are put on flow on the road, standard is when there are twelve to thirteen (12-13) vehicles in a mile per lane,

while density is maximum flow rate that exceed thirty (30) vehicles and thus traffic flow becomes unstable and minor incident of even traffic snarl up, jam density is when traffic flow stops stops with range of more than 250 vehicles in the lane.¹⁵

1.9 Theoretical literature Review

The investigate shall be directed by theories namely Traffic flow theory and Lawlessness theory. The theories will be dealing with Traffic Act efficacy and the (independent variable) and lawlessness (dependent variable) respectively.

1.9.1 The Michuki Rules

The government together with the public transport owners and other stake holders came up with policy measures in order to try and control this industry that was already being faced with many challenges whereby they resolved on government registered transport companies which include saving and credit cooperatives (SACCOs,) and every PSV was a compulsory to register they were agreed with the intentions of resolving the woos that were being experienced in this industry by the then minister of transport.¹⁶

To date the matatus owners Association is very vibrant and its major functions is to keep checks and balances to those members that has registered with them.¹⁷ they have formed an association that has come up with terms of services and codes of conducts with intention of transforming this industry for good in entirety. This is done through fitting safety belts, speed governors the uniform and budes of the operators in order for passengers to be able to identify them easily. In 2004, there was an overhaul transformation that was conducted in the whole country¹⁸.

The minister of transport that time was Honorable Michuki who started whole heartedly to restore sanity to this industry that it was on its knees and trough the so called Michuki rules that were imposed and also enforced there was much change and a lot of sobrieties resumed. All the matatus were required to operate from a designated area under the management of their Sacco's, to carry only the capacity of their vehicles as the clean record concerning the security and conduct of the crews were kept, this reduced the crime activities as the discipline

¹³ https://en.wikipedia.org/wiki/Traffic_flow

¹⁴ Henry Lieu (January–February 1999). "Traffic-Flow Theory". *Public Roads* (Vol. 62· No. 4).

¹⁵ Mestrovic, Stjepan. Emile Durkheim and The Reformation of Sociolog2017. Retrieved 22 July 2014.

¹⁶ Lee-Smith, Diana. (1989). "Urban Management in Nairobi: A Case Study if the Matatu Mode of Public Transit", in *African Cities in Crisis: Managing Rapid Growth*, Richard E. Stern and Rodney R. White (eds.), Boulder: Westview Press.

¹⁷ Kimani, M. (2017), *An Analysis of the Pattern of Road Traffic Accidents in Relation to Selected Socio-economic Dynamics and Intervention Measures in Kenya.*, Ph. D Thesis, Kenyatta University.

¹⁸ Ogonda, R. (1992), *Post-Independence Trends in Development of Transport and Communications*, in Ochieng W. R. and R. M. Maxon, eds., *An Economic History of Kenya*, Nairobi: East African Publishers.

was embraced.¹⁹ The number of deaths and injuries drastically reduced and road though accidents since the Sacco's started using new technology of tracking while management is required to monitor the activities and this has led to a big improvement even in the nation's economy.²⁰ MOA introduced the cashless fare payment system which they are confident that would improve the efficiency in operations.

The NTSA also put in place rules that's when one vehicle from a certain Sacco commits a Traffic offence they are all suspended from operating in order to bring about accountability and ensure all stakeholders comply with the Traffic²¹.

RESEARCH METHODOLOGY/ RESEARCH DESIGN

1.10.0 Introduction

The researcher has used the Doctrinal research which is concerned in analyzing of legal doctrines.

1.10.1 Sources of Data

Application and development through statutory provisions, cases and application of the power of reasoning, by the use of desktop data materials. such materials include: Primary sources such as the Traffic Act (Cap 403) (law) Statutory Provisions such as National Transport and Safety Authority Act No. 33 of 2012, National Police Service Act, Case Laws such as *Driving Schools Association (KDSA) v. The NTSA*, *Paul Thiga Namanya v Republic James Gacheru Kariuki V County Government of Mombasa* Secondary data include: legal principles, books, journals and internet materials.

Research design that the researcher has used is desk top research/ library research it's a framework which is used by researcher to guide in collecting and analyzing the data. Research designs its categorized according to the research methodology.

1.11.0 Data collection Instruments

1.11.1 Desktop research/ library research

This research is legal research that involves critical analysis of the Traffic law Act and therefore since the law is already a legislation which is written that's why the researcher chooses this form of design since it's the most suited and applicable design. As the resources will be in the library and on the internet.

RESEARCH ANALYSIS.

1.13.0 Content Analysis

The lawlessness in public transport is appearing to be increasing day by day from the over speeding beyond the dictated limit by the Traffic Act of not exceeding 80km/h, there should be no exception to the size of the car according to the Act, Road traffic collisions are the rule

¹⁹ Luchebeleli, S. (2019), City Mps, Matatu Men in Demo over Bus Plot, in The People Daily (Nairobi), 29 May 1999. Pg. 1, Col. 2.

²⁰ Kimani, M. (2017), An Analysis of the Pattern of Road Traffic Accidents in Relation to Selected Socio-economic Dynamics and Intervention Measures in Kenya., Ph. D Thesis, Kenyatta University.

²¹ Ogonda, R. (1992), Post-Independence Trends in Development of Transport and Communications, in Ochieng W. R. and R. M. Maxon, eds., An Economic History of Kenya, Nairobi: East African Publishers.

of no accidents and therefore to curb this lawlessness the law enforcement in the public vehicles must be expeditiously implemented effectively.

1.13.1 Relational Analysis

The Traffic Act stability it's a function of numerous factors and the extent in which the citizens expectations are met. Compliance with the law in public transport sector would be an indicator of law and government stability since society is founded on legal provisions compliance and lawlessness affects the stability of economy since this sector is a major stake holder to it. The violations of the law usually depend on whether offences are political or of public relevance in order to know if it can be tolerated basically public transport lawlessness can cause the system instability.

1.14.0 Ethical Consideration

1.14.1 Interlectual Ownership & Plagiarism

The researcher has been keen to adhere to the plagiarism rules by acknowledging the owners and authors of ideas and has turned in the document for cleaning in the TURNITIN program for cleaning. The final report on the plagiarism index has been attached on this document.

1.14.2 Access to Desktop data

Data that has free access also been acknowledged and well referenced.

1.14.3 Privacy and Confidentiality Rights

Existing ethical, legal, and other approaches to protecting confidentiality and privacy of personal data has been safeguarded, but major gaps and limitations remain.

1.14.4 Mis presentation and distribution of Data

In this research there is no intentional or unintentional misrepresentation of data or any communication of honestly reported data in a deceptive way.

1.15 SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

1.15.0 Introduction

This chapter presents the summary of the findings, conclusions and recommendations arrived at, the study focused on the assessment of factors influencing the implementation of the Traffic Act and Rules by the public transport vehicles in Kenya, various factors were studied first the study of the efficacy of the legal mechanisms where by the study, provides information on available laws, policies, and regulations that govern traffic related issues, in order to identify the existing gaps, possible causes of lawlessness in traffic matters, and provide recommendations on how the identified gaps can be addressed

Secondly it focused on the efficacy of traffic institutions relating on their tasks, regulation of the sector such as co-odination, policy guidelines, provision of service, law enforcement for transport industry to have effective management that is entrusted the Ministry of Transport (MoT

Lastly the efficacy of decongesting the traffic to wards the combating of lawlessness Traffic congestion is a major problem in many cities around the world, especially the Nairobi Metropolitan Region (NMR) and given the high economic, social and environmental costs incurred on account of road traffic congestion, the Government of Kenya as well as other actors have planned and implemented various strategies in an effort to mitigate these negative effects.

1.15.1 Summary of Findings

The study found that there is an international network which is under public transport authorities which has mandated International Association of Public Transport (IAPT) with making of policy decisions, its members are 3,400 in number composed of 92 countries. Lawlessness is a major problem within the public transport industry, in Kenya they are used as the main means of transport 70% of the transportation, involve buses, matatus, and motorcycles that uses paratransit mode therefore they are of very importance towards the economic development. This industry requires an effective law to facilitate efficient operations.

1.15.2 Conclusion

Based on the results from data analysis and findings of the research, one can safely conclude the following, based on the objectives of the study; NTSA Officers, Matatu Sacco officials, PSV Drivers and passengers are the major strategic areas employed by Government in implementing road traffic regulations within Nairobi City County. The study concludes that NTSA Officers commitment in the execution of their mandate positively influence the implementation of road traffic regulations. Matatu Sacco officials' adherence to the NTSA policy would significantly support the implementation of road traffic regulations. Finally, PSV Drivers awareness and passengers awareness positively influences implementation of road traffic regulations in Nairobi City County

1.15.3 Recommendations

The study recommends that the NTSA be given enough resources to implement its policies on the road safety as the study finds it as a major factor influencing the implementation of the road traffic regulations this should include expansion of offices at all county levels with adequate human resources. The study also recommends registration of drivers at the national level as well as promoting awareness on the importance of road safety. Matatu saccos be held responsible for any misconduct of drivers registered under them as well as setting stiff penalty to rogue drivers who do not want to comply with road safety regulations. Finally, NTSA should conduct sensitization on passengers and other minor road users on the importance of adhering to traffic regulations through understanding of traffic lights, road signs and the role of traffic police officers. All these will not only help in reducing the road crimes but also the road carnage.