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Kenya's speeding laws call for review

By Pravin Bowry Updated Wednesday, October 7th 2015 at 07:55 GMT +3

NAIROBI: The ever-growing and largely non-compliant motoring community, the Kenya National Highways Authority and the pesky and corrupt enforcement agency, the National Police Service, have made driving in the country a nightmare; all compounded by a confusing set of laws.

The rigid approach of magistrates to some routine traffic offences is often draconian. Exceeding speed limits by even one kilometer per hour has resulted in fines of Sh80,000 being imposed!

But a new law, the Traffic Amendment Bill 2014, will perhaps remedy imposition of high fines.

So what is the law on speeding? What I have discovered after an analysis of the law is shocking, confusing, mind-boggling and it is surprising that most Kenyans are totally ignorant of their rights.

Dealing exclusively with the offence of speeding, under Section 42 of the Traffic Act, it can be surmised that speed limits in the country range from 10 miles per hour (not km/h) to 130 kilometres per hour. The Traffic Act and the Traffic (Speed Limit) Rules state the following are the speed limits in Kenya.

On dual-carriage highways, the limit for private motor vehicles is 110 km/h. On single carriage highways, the limit for private motor vehicles is 100km/h. On any road, the speed limit for commercial vehicles, matatus, omnibuses and other public service vehicles is 80 km/h.

On any road the speed limit for a vehicle drawing one trailer is 65 km/h.

Interestingly, there is no statutory definition of the word 'highway' or 'carriageway'. Black's Law Dictionary, an authoritative text in the profession, defines highway as "any main route on land, water or in the air, a free public roadway or street that every person may use or the main public road connecting towns or cities".

What many Kenyans do not know is that Section 70(5B) of the Traffic Act provides road users with a grace speed limit of up to 20 km/h on a 'road'.

The Section states, "A person who violates a speed limit prescribed for a road under subsection (1A) by more than 20 kilometres per hour commits an offence and shall be liable, on conviction, to imprisonment for a term of not less than three months, or a fine of not less than twenty thousand shillings, or both".

Section 70 (1A) imposes an obligation on the highway authority to place either on the road or near the road the acceptable speed limit on that particular road.

That notwithstanding, the highways authority in Kenya seems to be sleeping on the job by failing to place clear signs on all roads marking the speed limits hence leaving the drivers susceptible to constant uncertainty. What is clear though is there is no grace limit for the following specific circumstances:

Around trading centres, towns, municipality, city the limit is 50 km/h. At the Nyali Bridge in Mombasa, it is 10 km/h

The next issue is the police discretion on speeding. Under the repealed Police Act, there are administrative directives to the police contained in the Force Standing Orders.

Chapter 47, Rule 9 of the standing orders provides that drivers exceeding the speed limit by less than 10 km/h will be warned rather than prosecuted. This effectively means that exceeding the speed limit by 10 km/h is excusable by a warning.

The National Police Service Act 2011 repealed the Police Act but there seems to be no provision for new standing orders. Whether or not the old Police Standing Orders are applicable is a moot point.

Fines for speeding under Section 43 of the Traffic Act are capped at a maximum of Sh100,000 or three months imprisonment in default. However, the Traffic (Amendment) Bill 2014, currently awaiting enactment, proposes to reduce the fines from:

For exceeding by 5-10km/h, Sh10,000. For exceeding by 11-20km/h, Sh15,000. For exceeding by 21-30km/h, Sh20,000. For exceeding by over 31km/h, Sh25,000. See also: Regulator calls for increased punitive action to curb truck overloading

Are these speed restrictions with or without the grace allowable under the law or can the discretionary powers of the police be invoked by defaulting drivers?

The Attorney General, that legal omnipresent individual who is empowered to revise Kenya's laws, needs to look at the laws on speeding urgently, before the Traffic Amendment Bill 2014 is read for the third time in the Parliament.

Unambiguous and enforceable speeding laws and simple legal methods of dealing with defaulters without intimidation and wastage of time would appear to be the clarion call of all motorists.

There is also a case for the motoring fraternity being educated on the enforcement methods and how speed cameras work on the road and the evidential procedures used in court to punish the speeding culprits.

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