

**UNIVERSITY OF NAIROBI**

**DEPARTMENT OF SOCIOLOGY AND SOCIAL WORK**

**THE ROLE OF FINE AS A CRIMINAL SANCTION: THE CASE OF TRAFFIC  
OFFENCES AMONG DRIVERS OF PUBLIC SERVICE VEHICLES IN NAIROBI,  
KENYA**

**BY**

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REQUIREMENT FOR THE AWARD OF THE DEGREE OF MASTER OF ARTS IN  
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NAIROBI**

## **DECLARATION**

This research project is my original work and has not been presented for a degree in any other university or any other award.

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This project report has been submitted with my approval as the University supervisor.

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## **DEDICATION**

To Rehema and Eugene, the source of the greatest joy I am enjoying under the sun.

## **ACKNOWLEDGMENT**

I wish to acknowledge my supervisor Dr. James Karatu Kiemo for his enlightened and generous sharing of his insightful thoughts throughout this research project.

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## ACRONYMS

CJS:	Criminal Justice System
CSO:	Community Service Order
EBT:	Eastern-Bypass Travelers
KLR:	Kenya Law Report
KMOS:	Kariobangi Matatu Owners Sacco
LBDT:	Lucky Babadogo Travelers
LoK	Law of Kenya
NCAJ:	National Council on Administration of Justice
NTSA:	National Transport and Safety Authority
PC:	Penal Code
PSV:	Public Service Vehicle
PTS:	Public Transport Sector
SPSS:	Statistical Package for Social Sciences

## **ABSTRACT**

The fine as a criminal sanction is the most common form of sanction for traffic offences in Kenya. Despite this, it has received the least of research compared to Community Service Orders and Imprisonment for traffic offences across the criminologist and penologist arena. Little is known today about the role of the fine as a sanction for traffic offences despite its use. This study set out to examine the role of the fine as a criminal sanction for traffic offences among public transport sector players. The study objectives were; to establish the level of the use of the fine in regulating traffic offences; to establish the extent to which the fine influences behavior change among drivers of public service vehicles and the challenges and opportunities in the administration of the fine as a form of sanction. The study reviewed background information on the fine seeking to understand the history of the fine and its practice across several jurisdictions in the world. Relevant literature on previous studies on the fine was reviewed to reveal the patterns and trends in the use of the fine. Both specific and general deterrence theory and rational choice theory were reviewed and their arguments used to fit the study. The study adopted a descriptive research design. Both snowball and purposive sampling methods to select relevant samples to answer to the research questions. Purposive sampling was used to select key informants for the study while snowball was used to select the primary respondents. The study used both questionnaire and interview schedules to collect primary data. An observational checklist was developed to help in the perusal of court records. Ethical standards were maintained as well as relevant authorizations to allow the researcher to proceed for data collection. Both qualitative and quantitative data were obtained for analysis. The study analyzed the data descriptively using several statistical tools in order to answer to objectives. The findings of the study indicated the level of use of the fine as a sanction on traffic related offences. It also showed that the fine as used faces a number of challenges that hinder its role. The challenges identified included; corruption, inconsistencies and variations with regards to amount of the fine for traffic offences. The study thus made relevant recommendations including to develop an integrated fines management information system and develop a way of making the fine become determinate. The study further suggested other areas for future research.

## **CHAPTER ONE: INTRODUCTION**

### **1.1 Background of the Study**

The fine has been defined as an amount of money; a form of pecuniary punishment that is ordered by a court of competent jurisdiction to be paid by a defendant as a penalty for his unlawful actions (King, 1995). The fine can be ordered in both criminal and civil cases, but it is most common among traffic incidences and for drunk and disorderly conduct. The fine consists of fees, in addition to court costs. Also, fines can be ordered as part of someone's sentence, or it can constitute the entire sentence, (Moffat, Steve & Poynton and Suzanne, 2007).

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 reducing the pleasure and increasing 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 Bentham's old propositions, 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 still able to sustain the fine feeling that it is less costly than custody or probation. Moreover, it constitutes a meaningful punishment and deterrent for legal persons like corporations and companies.

In Germany, where the fine is the primary sanction for crimes punishable by a prison term of six months or less and the fine is the only form of punishment for minor traffic violations, (Friedman. 1983), the day fine system lacks a theoretical backing (Bogelein, 2018). There has been little criminological research both in Germany and across the world on how effective the fine is and whether varying the fine amounts may generate any additional deterrent benefits or influence behavior (Nagin, 2013).

In America, Bastien (2017) had critiqued the fine as used by the justice system to put the families of the poor and the people of color into financial disrepair. He argued that the fine as is used by United States justice Department was disproportionately putting the poor at risk of loss of their property because of the expanded use of court fines without repairing the harm or malice committed. This implied that the fine though is largely used across the US justice system, its role and effectiveness is in doubt. Bastien (2017) further observes that the assessment of fines, fees, and other pecuniary charges succeed only in promoting financial insecurity of low-income households. These payments would meet other individual and family needs and thus help reduce the wealth gap.

According to Macrory, (2006), a sanction should aim for behavior change in the offender; eliminate any pecuniary gain or benefit from non-compliance; be responsive and consider the appropriate and particular offender and regulatory issue needs, which may include punishment and the stigma that comes with a criminal conviction; be proportionate and commensurate to the nature of the offence and the harm that is caused and aim to restore the harm caused by way of regulatory non-compliance, whenever appropriate as well as aim to deter future non-compliance. All these tenets are largely not met by the fine as a form of punishment (Macrory, 2006).

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).

Caramichael et al (2018), note that fines as practiced in most jurisdictions have expanded the economic sanctions and increased the creativity of police officers and court officials who have been reduced to a larger extent to become tax collectors for the government rather than to serve 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 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 and sec, 24 of the Penal Code). Moreover, the Traffic Act is the key statute law that is applied in the enforceability of traffic rules and regulations. As part of enforcing the act, 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. Moreover, traffic police was thus required to enforce the

legal notice and the traffic act cap 403 laws of Kenya and also examine PSV 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 jurisdictions 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 applied included 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.

**Table 1: Sentences in the Magistrates' Courts, by Type of Sentence, 2013-2014**

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

**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, incidences 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).

## **1.2 Problem Statement**

The fine as a sentence option employed by the Criminal Justice System has not had much deterrent effect on both the offender and the general public (Weatherman and Moffat, 2011). In Kenya, the use of the fine as a sentence for traffic and other minor offences has been identified as one of the sources of dissatisfaction with the system of administering justice (Mbori, 2017). Courts impose the fine as an economic disincentive for criminal conduct in both minor and serious offences (Martin et al, 2018). Despite its common use in policing traffic offences, cases of traffic violations in Kenya have gone up (Annual Police Report, 2018; 2017; 2016).

The collection system of the fine in Kenya is unstructured and inconsistent thus it is always marred by corruption and irregularities (Mnjama, 2013). The fine sentences are indeterminate and disproportionate on the amounts of fine and the offence committed (Kinyanjui and Akech, 2016). This variance also exists depending on the jurisdiction the offender has committed the offence (Kinyanjui and Akech, 2016). In a system of such

inconsistencies, the effectiveness of any particular tool cannot be determined. Despite having a system of collecting fines from violators of traffic rules, the violations have persisted with serious ramifications to the other road users.

Therefore, the problem that provides the impetus of this study is that the fine as is institutionalized to be used on traffic offences has the potential to not be effective in promoting adherence to traffic rules and regulations. Few studies (Mbori, 2017; Muroki, 2017 Kinyanjui and Migai 2016 and Vyas, 1995) have been conducted to determine the role and effectiveness of other sentencing options as well as the fine on traffic offences. This study seeks to determine the role of the fine in policing traffic related crimes among PSVs drivers.

### **1.3 Purpose of the Study**

The purpose of this study was to examine the role of the fine as a penal sanction among drivers of public service vehicles.

### **1.4 Objectives of the Study**

#### **1.4.1 Broad Objective**

The study's broad objective was to examine the role of the fine as a form of criminal sanction in policing traffic sector among drivers of public service vehicles.

#### **1.4.2 Specific Objectives**

- i. To investigate the level of the use of the fine in regulating traffic offences among drivers of public service vehicles.
- ii. To establish the extent to which the fine influences behavior change among drivers of public service vehicles.

- iii. To find out the challenges and opportunities in the administration of the fine as a form of sanction among drivers of public service vehicles.
- iv. To examine measures that can be put in place to make the fine achieve deterrence.

### **1.5 Justification of the Study**

This study comes at a time when the fine has been established as the most used form of punishment in Kenya, (Criminal Justice System Audit, 2016) and yet no theoretical backing appears to be there in the realm of criminological inquiry to justify the use of the fine and how the fine impacts on the offender, the attitudes they have, the feelings it elicits and the effects it has. Most studies have been conducted in the past on the different forms of criminal sanctions (O'Brien and Farrell (2005), Nagin et al, (2013) and Liebling and Maruna (2013). However, the fine has been the least of focus by the Criminologist. This study seeks to address that specific purpose.

The criminal justice system redeems society of the need to input sanctions by themselves. Therefore, an investigation of the role and effectiveness of one of its sanctions, how it is practiced and the feelings that it elicits among the public is important. This study has described the fine, its level of use and the extent to which it influences behavior change among the public transport sector players.

This study has offered insights with regards to how the fine works and how it is perceived by the individuals who have in the past been fined. The findings of this study are should inform future fine practices by the Criminal Justice System players. This study further set open more research on the fine in Kenya.

### **1.6 Scope and Limitations of the Study**

The scope of this study is on the use of the fine in traffic offences from a criminological point of view and among PSV drivers who are active players in the public

transport sector and judicial officers (magistrates, prosecutors and court clerks). The scope of the study was on the level of the use of the fine, the extent to which the fine influences behavior change and the challenges and opportunities in the administration of the fine.

The study is limited to establishing the role of the fine. Since there was no population denominator, it fell short of determining the role and effectiveness of the fine as a criminal sanction.

The researcher relied on self-reports by the primary respondents and secondary data collected from court records. Self-reported data were susceptible to self-biases and the (in) ability to remember. The secondary data may have suffered from recording error and may also have not captured all reported cases. These were the limitations to this study.

### **1.7 Definition of Key Terms**

The following definitions are provided to ensure uniformity in understanding terms and concepts in the study.

**Legal Person:** This is a person reorganized by the law as having certain rights and privileges and also subject to certain obligations as the law provides.

**Marginal Deterrence:** This refers to the incentives offenders have in order to refrain from harmful criminal acts.

**Monetization of punishment:** This refers to use of money as a tool of causing pain or harm to an offender because of their illegal act they have committed.

**Suspended sentence:** This is a form of judgment where the offender has to meet certain conditions which if they violate; they are subject to the sentence that had been pronounced by the judge.

## **CHAPTER TWO: LITERATURE REVIEW AND THEORETICAL FRAMEWORK**

### **2.1 History of the Fine as Punishment**

Fines, as a method of criminal punishment, have been used for as old as the system of criminal justice, being applied whenever the offense was perceived as not sufficiently serious to warrant incarceration and when the offender posed no grave threat to the society. (McDonald et al, 1992). According to O'Malley (2009), fines represent the new departure from the panoptical incarceration system that had been suggested by Bentham (1983). The panoptical incarceration system was based on mass imprisonment without the disciplinary and reform aspects (Simon, 2010). Bentham (1983) observed that the fine because of its liquid nature; it is easily reversible and is also measureable into proportions and thus can be used to punish nearly all forms of crimes.

According to Georg Simmel (cited in Laidler and Rowe , 1980), the use of money as a means to punish (monetization of punishment) has developed in the new economic order and has grown because of the ability of the fine to be treated as a private matter. However, the problem with the fine remains how to equate it with the offence in order to make it fit (Feeley, 2017 and Cooter, 1984).

Hugh and Kauzlarich (2010) observe that the rationale for punishment has been underpinned by Bentham's arguments on the classical school of thought; that punishment needs to fit the crime committed. Bogelein (2018) notes that the fine as used in most jurisdictions defeats the objectives of punishment such as deterrence, rehabilitation and retribution. Zelizer (2005) also notes that though monetary punishment has been the practice of most criminal justice systems today, the fine is such an ubiquitous feature of modern life that it is impossible to associate it only with one component at a time; the offence committed.

According to Daunton (1971), the wide use of the fine is amply justified. He observes that the fine provides an alternative to imprisonment which is capable of adjustment according to the offender's means and the gravity of his offence. It is easily remissible in that it the court or administrative body can repay it in the event of injustice. Moreover, it is economical from the perspective of the state and generally, it leads to the generation of revenue. According to the American Penal Law (as cited in Daunton, 1971) The court shall not sentence an individual to pay a fine in addition to any other sentence that is authorized unless it is proven that the person has derived a pecuniary gain from the offence; or he has caused an economic loss to the victim; or the court is of the opinion that a fine is uniquely adapted to deterrence of the type of offence for which the person is involved.

Beckett and Harris (2011), note that the use of the fine across the United States (US) has been exploited to target individuals who are economically challenged as well as people of colour. They observe that though magistrates exercise discretion while using their fine, an assessment of the rates of the fine as well as the fine amounts have been skewed based on ethnicity and race. This indicates how the fine (like other penal sanctions) can be used to disproportionately target specific individuals.

In Kenya, advocates of non-custodial sanctions including the fine have argued that incarceration is not more effective than noncustodial sentences in terms of preventing individuals from recidivism during the years following release. That prison terms are certainly more successful in keeping offenders away from society for a certain period of time, does not imply that if they were out, they would have been committing offenses, (Vyas, 1995). This, together with humanitarian and economic reasons had informed the departure from the overwhelming reliance on imprisonment.

## **2.2 Frequency and Level of the use of the Fine**

The fine as a form of penal sanction has continued to be used more across jurisdictions in the world. Muntingh and Perry (2006) have argued retributive approaches have consistently failed in realizing deterrence. According to Harris, (2017), the number of traffic stops made by the police and whose verdict were likely to result to financial obligation was 26,433,330 in a year in the US alone.

In Kenya, monetary sanctions have always been part of our law, (Penal Code sec, 24 LoK). As part of penal sanction, the fine has been imposed on a number of offenses. Statute law fixes fines for certain violations while other laws and regulations may provide for both fine and imprisonment or either the fine or imprisonment. With the exception of mandatory fines, judicial officers have to exercise their discretion when imposing a specific fine. This is always informed by the means of the offender as well as the nature of the offense (Migai and Kameri-Mbote, 2012).

Under section 28 of the penal code, limits have been set for amounts of the fine that can be charged and the equivalent number of days for which the offender can serve time. These amounts apply whenever there is no specific statute provision on the amount of fines to be levied.

**Table 2: Fine Amounts and Maximum Period**

<b>Amount</b>	<b>Maximum Period</b>
Not exceeding Sh. 500	14 days
Exceeding Sh. 500 but not exceeding Sh. 2,500	1 month
Exceeding Sh. 2,500 but not exceeding Sh. 15,000	3 months
Exceeding Sh. 15,000 but not exceeding Sh. 50,000	6 months
Exceeding Sh. 50,000	12 months

**Source; Penal Code sec'28.**

In Kenya, the use of fines is mostly imposed as punishment for traffic related offences (Vyas, 1995). The NTSA has further developed a schedule for fining drivers who have violated the traffic rules. In their schedule a maximum fine of Kshs. 10000 would be charged for exceeding the speed by up to 20km/h, failing to fit prescribed speed governor, obstruction and driving a vehicle with missing number plates. Unclean seatbelts, failing to wear seatbelt and exceeding speed limit by 5 km/h would attract a minimum fine of Kshs. 500. (See appendix 1).

Shaman (1990) argues that the fine is economical than keeping the offender in jail, it does not interfere with the business or occupation of the person, it is very flexible and that it can be used to punish the legal persons like companies and corporations. This indicates that the fine may be effective in helping to punish corporations and companies. However, its role in punishing offenders is elusive.



Bogelein (2018) observes that though the fine can be adjusted relative to the offence, its disregard for the economic status of the individual offender putting the poor at a much higher risk of default, jeopardize the objective reform, rehabilitation and deterrence. Moreover, the payment of the fine amounts is often done by relatives and friends of the offender thus spreading the burden to others, Bogelein (2018).

According to Otieno (2018), the number of traffic cases reported is suffocating the Criminal Justice System and yet there is little or no improvement on road safety and use by a majority of the violators (who are almost always in the public transport sector). This is indeed in agreement with the findings of Walter and Studdert, (2015) who found out that drivers had more crashes and violations following infringement penalties. They further observed that the risk of violations remained relatively high for more than 6 months after the penalty.

However, Goldenbeld and De Craen (2013) have pointed out that if motorists perceive the fine as commensurate to the offense committed, the pent up aggression and tension is most likely going to reduce and they may be less likely to repeat the offence for which they have been fined.

## **2.2 The Fine and Behavior Modification**

Cramton (1969), posits that legal sanctions have been imposed on victims (offenders) because partially they have been arguably thought to channel human behavior towards a direction which has been defined by both society and the law. Therefore this purposive use of the judicial system in most jurisdictions of modern society has been accepted as the norm. Cramton (1969) further observed that rational men would order society away from anti-social behavior and towards conformity. What continues to evade

modern society is the efficacy of the fine in meeting the ends of what are known as the objectives of punishment.

According to Khanna (1995), some forms of social control can work better than others particularly in the realm of justice administration. The fine as one of the sanctions in policing the highway has not yielded any behavior change. Khanna (1995) observes that there is indeed little to show of how effective the fine as a legal sanction has been. He further reveals that if one fine produces the desired result (future compliance) on the individual driver, it should not be construed to mean that the fine is generally effective.

While analyzing data on the speeding crackdown of Connecticut, Campbell (1968) revealed through regression analysis that the drop in road fatalities had no association with the crackdown and it still the drop would have happened whether there was a crackdown or not.

According to Cooter (2000), what is needed by society is thus not the highly thinking individual to rationalize their obedience to the laws or lack of it. It is rather that individual who will unthinkingly deter themselves. He further points out that societies are able to function when majority of the people are able to obey the law not for fear of punishment and the gravity of it; but rather for justifications derived from their conscience and conviction. Cooter (2000) notes therefore that the fine as an experience may not yield future behavior modification and change, but the change should not be in its experience.

### **2.3 The Fine as a Deterrent Factor**

According to Moffat et al, (2007) there is no evidence to suggest the presence of marginal deterrent effects from court-imposed fines on driving offenders. They argue that the most consistent predictors of returning to court were individual attributes of offenders and thus no substantial increases in fines and licenses would have any impact or potential in

detering offenders. As such, increase or a decrease of the fine according to them does not generate any deterrent benefits for society.

Sherman (1993), in his study of defiance found that arrest and punishment was likely to deter future offences among those in the formal employment, but found arrest and punishment quiet ineffective on those who were unemployed or employed in the informal sectors particularly if the punishment is perceived to be unfair to the lower social classes. Cramton (1969) notes that the individual's perception of what the consequences of their action will be produces a much more deterrent effect than the objective circumstance that they may find themselves in. this means that if drivers perceive of a determinate outcome (the fine and its amount) if they are arrested of a traffic offence, they are most likely to obey the rules.

The fine schedule provided by the NTSA for traffic infringements make no allowance for what the Court might consider such as personal culpability or individualized sanctions (Muroki, 2017). There is a flat rate penalty system. However, if infringement penalties are to act as a deterrent to re-offending then consideration should be given to finding a means for increasing the penalty for second and also subsequent offences (Muroki, 2017).

In policing the traffic and motor vehicle offences in Kenya, the fine accounts for nearly 85% of penal sanctions that are meted out, (NCAJ, 2016). In Finland, speeding fines are directly linked to the salary of the individual. The more the driver over speeds, the greater the count of the fine they will pay (Manzano and Nuño 2012).

According to Kurtz et al, (2014) the fine is a very effective and efficient specific deterrent if applied retributively and extracted publicly. In their study, Kurtz et al, (2014),

posit that monetary fines if applied without retributive aspects would increase the prevalence of the behavior that is being targeted. As such, specific retributive fines are appropriate for driving related offences. They also note that public fines are more deterrent than private fines.

The popularity of fines as a sanction is because the fine can be precisely calibrated to reflect both the seriousness of the offence and the financial means of the offender. The fine also avoids the stigma associated with other penalties such as prison and CSO (Spicer and Becker 1980). However, the fine despite its use has not been able to specifically deter against driving related offences (Kurtz et al, 2014).

## **2.4 Theoretical Framework**

Unlike a postulate which is an assumption, a theory is a body of logically interrelated principles that are put forth to explain a particular phenomenon. This study has been informed by several theories to understand the concept of the fine as punishment.

## **2.5 Deterrence Theory**

Founded by the classical school of criminology (Cesare Beccaria and Jeremy Bentham), deterrence has grown to be one of the major objectives of punishment. According to Beccaria and Bentham (cited in Nagin, 2013), there are three key ingredients to the deterrence process the severity, certainty, and celerity of punishment. As such, the fine as a form of sanction needs to be meted severely, with certainty and swiftness in order to achieve deterrence on the part of the offender.

Nagin (2013), observes that deterrence is a theory of choice in which potential offenders balance the benefits and costs of committing a crime. Benefits may be pecuniary if they can be evaluated in monetary terms like in the case of property crime, but may also

involve intangible benefits such as defending one's honor, expressing outrage through violence, demonstrating dominance, cementing a reputation, or seeking a thrill. Braithwaite, (1989), notes that the potential costs of crime are comparably varied. Crime can entail personal risk if the victim resists. It may also invoke pangs of conscience or shame on the perceived offender. In order to achieve deterrence, the fine is often increased to huge amounts to increase its severity and thus achieve deterrence.

Underlying of deterrence theory is the view that if state-imposed sanction costs are sufficiently certain, criminal activity will be discouraged. The fine therefore should be determinate for specific traffic offences. Therefore, for Beccaria (1986), both severity (high fines) and certainty (determinate fines) have to be infused together for deterrence to be achieved.

Nagin (2013) further observes that the more closely the punishment follows upon the commission of a crime, the more just and useful it will be on the offender. For the fine to have a deterrence effect on the driver, it therefore has to be applied as quickly as possible on the offender. In the traffic context, general deterrence is the diffuse signal that emanates from the very existence of the regime: drivers seek to obey road rules because they realize they risk fines and penalties if they break them, (Walter and Studdert 2015). Also, the general public would most likely shun recklessness whenever they learn that violators of traffic offences are severely punished. The aspect of general deterrence is often confirmed when, there is reduced violators of traffic offences as reported by police and court records.

Specific deterrence refers to conformity among those who have had an effect of a sanction as offenders who have personally had the sanction inflicted on the before. Specific deterrence predicates that being punished for an offence increases the perceived risk of

future acts of crime for those so punished and thus reduce the chances of offending in the future.

Specific deterrence arises from direct personal experience. According Apel and Nagin (2011), specific deterrence refers to the reduction in reoffending that is associated with and is presumed to follow actual experience of being punished. Thus, punishment; custodial or non-custodial, influence the expected utility of future criminal tendencies.

According to specific deterrence theory, drivers who infringe road rules and are penalized learn their lesson; they become less likely to reoffend, which indirectly leads them to drive more carefully and safely. Also, punishment should be so distasteful as to warrant one not to need its repeat. Whether the fine as punishment meets this maxim is mixed.

## **2.6 Rational Choice Theory**

Rational choice theorists posit that law violating behavior occurs when an offender decides to risk breaking the law after considering both personal factors and dexterity and situational factors that may increase their probabilities of being caught (Siegel, 2010). According to Becker (cited in Siegel 2010), the offender is rational individual whose decision is subject to a thought process to determine options that would produce more rewards to them while minimizing their risks. Before choosing to commit a crime, reasoning offenders carefully select targets and their behavior is systematic and selective (Siegel, 2010).

As such, people who believe that the risks of crime outweigh the rewards may decide to proceed with their act. If they think they are likely to get arrested and punished, they are more likely to seek alternative legal options. For drivers, their actions are rational and it means that they have considered the outcome of their violation of the law or compliance. If

they choose to violate traffic rules, it means they will derive more rewards from the violations (over speeding, carrying excess passenger for more financial and material gains). This they choose at the expense of being arrested for traffic violations which if they are arrested, they presume would attract a penalty worth less than the gains they have made.

According to rational choice theory, individuals will forgo crime if the risk of punishment is greater than the possible profit, the risk or damaging their reputation among peers is greater than the intended gains, if the chances of being caught and punished are high and the certainty of the penalty is guaranteed (Siegel, 2010). For the driver, the chances of compliance to the traffic act are improved when, the punishment for their violation is guaranteed, the chances of getting caught are increased and the risk of damaging their reputation is exacerbated.

Criminals then are people who share the same ambitions as conventional citizens but have decided to cut corners and use illegal means to achieve their goals. Those goals therefore need to be met with sufficient criminal sanctions. The fine thus needs to be severe enough to defeat criminal tendencies among drivers of PSV's.

## **2.7 Conceptual Framework**

The conceptual framework is used to show the relationship between the variable in the study. It also shows the interplay between the independent and dependent variable in the research, (Riechel and Ramey, 1987). The study was guided by the conceptual framework in the Fig. 2.1 below. This framework was used to present the preferred approach to the role of the fine.

In the conceptual framework, the study notes that the fine as a form of punishment should be able to deter the individual offender from future offending. The study focused on

specific elements of the fine as punishment (independent variable) which included; the fine administration, amounts of the fine, timeliness and frequency of its use, and policy and practices and amendments to the law.

These attributes were integrated together to constitute a fining experience that either deters the offender or makes them to re-offend. The outcome was measured as either an achievement of compliance or lack of it (dependent variable).

The study also observed that certain variables were beyond the control of the study. The factors included individual characteristics such as age, gender and education level as well as the social context in which the PSVs operate.

### Conceptual Framework

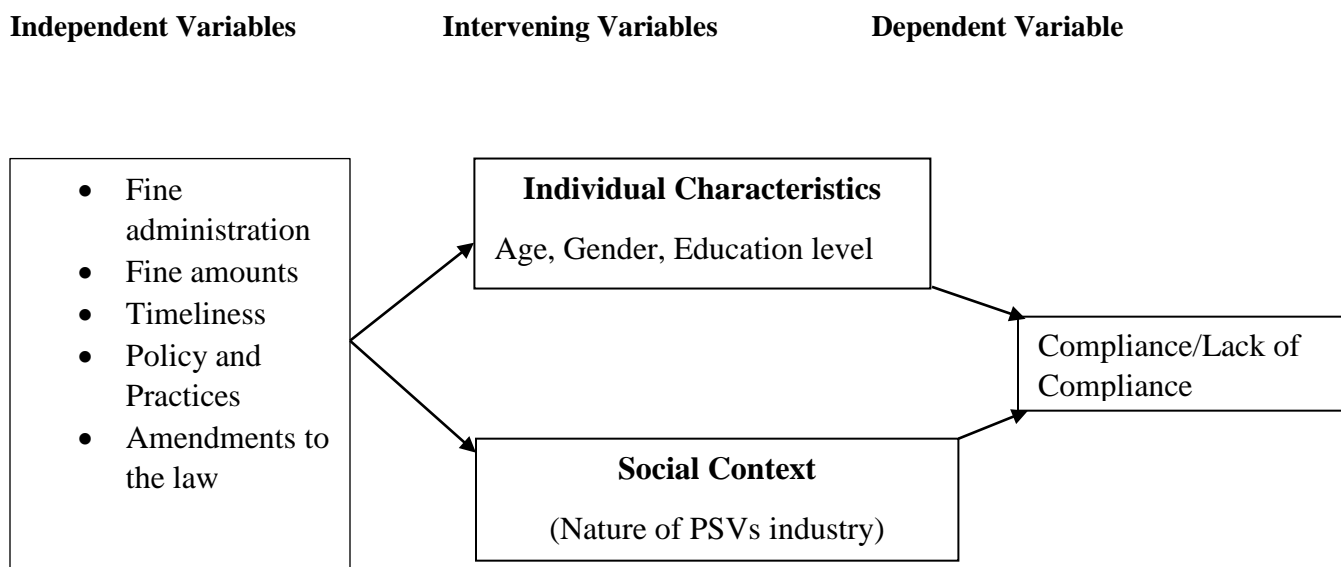


Figure 1: Conceptual Framework



## **CHAPTER THREE: METHODOLOGY**

### **3.1 Site Selection and Description.**

This study was conducted in Nairobi City County at major PSV termini namely; Koja, Country bus station, Bus station, Railways, and also at Makadara Law Courts. Nairobi County is one of the 47 counties in Kenya. It borders Kiambu County to the North and West, Kajiado to the South and Machakos to the East. The county has a total area of 696.1 Km<sup>2</sup> and is located between longitudes 36° 45' East and latitudes 1° 18' South (County Annual Development Plan, 2017). The PSV sector in Nairobi controls nearly 80% of transport in the city (King'oina, 2010).

The choice of the termini has been informed by the huge number of PSV operators in those sites and the huge numbers of commuters that they move every day thus increasing the probability of getting drivers who have been fined. Also, the diversity of the termini consisting of both mini buses, buses and 14 seater vehicles.

Makadara Law Courts was selected for the study because of the frequency of handling majority of traffic offences that occur within the selected termini.

### **3.2 Research Design**

Research design refers to the strategy the researcher has chosen to proceed with the study. For this study, the researcher has used a descriptive design to determine the role of the fine as criminal sanction in regulating traffic offences among public transport players. A descriptive design aims to accurately describe a phenomenon using both qualitative and quantitative methods. This design also allowed the researcher to determine the characteristics, frequencies and the trends of the fine. Thus it helped to provide rich data set that often brought to the fore new awareness regarding the fine among public sector players.

Survey method was adopted by the researcher to allow for the collection of information from the sample population. Survey was preferred because of its ability to allow for interaction between the subjects of the study and the researcher as well as the ability to collect both quantitative and qualitative data.

### **3.2.1 Target Population**

According to Lavrakas, (2008), a target population "...is the entire set of units for which the survey data are to be used to make inferences. Thus, the target population defines those units for which the findings of the survey are meant to generalize." The study target population was the PSV drivers who have been fined in Kenya.

### **3.2.2 Unit of Analysis**

Singleton et al (1988) defines a unit of analysis as an object of study or an item under study that is to be described or analyzed. According to Niels (2007), every case is a single unit of analysis. The unit of analysis for this study was individual fines.

### **3.2.3 Unit of Observation**

A unit of observation is an object or an individual about which information about the research study is collected. According to Mugenda and Mugenda, (2003), a unit of observation is the subject, object or item from which data is obtained to answer the research problem. For purposes of this study, the units of observation were; PSV drivers who had been fined and secondary data.

### **3.3 Sampling Procedure**

Kothari, (2012), defines a sample design as a definite plan for obtaining a sample from a given population. It includes the procedure the researcher used to select the right sample from the target population. For this study, the researcher adopted non-probability

sampling techniques. Non-probability samples do not obey the probability rules and are suitable for qualitative studies where there is limited data available.

First, the researcher used snowball sampling technique to recruit PSV drivers who had been arrested and fined in the past 6 months. Snowball sampling was used because it would be difficult to find drivers who would admit to having been arrested and fined for a traffic offense. Through referrals, one fined driver would recommend other study participants whom they knew as having been in the same situation as themselves and who meet the study criteria.

Secondly, purposive sampling was used to select key informants (magistrate, court clerk and the prosecutor) for the study. This is because the researcher needed to focus on particular characteristics of the key informants that were of interest (their role in handling traffic related offences) which would best enable the researcher to answer the research questions. One magistrate, two prosecutors and one clerk in charge of the traffic registry were selected.

### **3.4 Sources of Data**

This study used both primary and secondary data to inform its findings. Primary data was collected from the fined matatu drivers, the prosecutor and magistrate. Secondary data was collected from court records, and the office of the prosecutor. Other publications relevant to the study were also relied upon to inform the study.

### **3.5 Data Collection Tools and Procedure**

The study utilized questionnaires and interview schedules to collect data. The interview schedule was used for key informants in the study.

### **3.5.1 Questionnaires**

A Semi-Structured questionnaire was used for data collection. The questionnaire had both open and closed-ended questions and was administered to fined PSV drivers who were the primary respondents. The researcher issued the questionnaires and waited for them to be filled then collected them back for analyses. This was important in ensuring that the turnover rate for the questionnaires and the completeness of answering the questions in nearly guaranteed. Also, the researcher was available to make clarifications whenever there was a need to do so.

### **3.5.2 Interview Schedules**

Interview schedules were developed to aid the interviewing of key informants. According to Maxfield and Babbie (2006), specialized interviewing can be incorporated into any research study to supplement questionnaires. The research instruments were issued with the assistance of two research assistants to collect data within a period of one week.

### **3.6 Data Analysis**

Qualitative data was analyzed thematically based on the objectives of the study pinpointing, examining and recording patterns. It was then presented in a report of key findings under each main theme or objective, using appropriate verbatim quotes to illustrate those findings.

SPSS program was used to process quantitative data. The quantitative findings from the study was analyzed descriptively and be presented in the form of tables of frequencies, pictorials, histograms and pie charts. Inferential statistics specifically Multiple Regression analysis was also used to test the use of fines.

### **3.7 Ethical Considerations**

The authority to carry out the study was sought from relevant research authority and from the Judiciary. The researcher informed all participants through a covering letter their voluntary participation and confidentiality of the information they gave. Thus, an informed consent was sought from all respondents.

## **CHAPTER FOUR: DATA PRESENTATION AND ANALYSIS**

### **4.1 Questionnaire Response Rate**

The researcher administered 75 questionnaires to PSV drivers who were the primary respondents. Three of the questionnaires were incomplete and the researcher discarded them during analysis. Key informants who were selected for the study were judicial officers from Makadara Law Courts and included, the prosecutor from makadara law court traffic division, the magistrate and court clerk. They were interviewed with the aid of an interview. The table 4 below shows the response rates:

This study also interviewed four key informants based on the nature of the required information. This was used to get more in depth information on the level of fining, the extent to which the fine influences behavior and the challenges and opportunities in its administration.

### **4.3 Demographic Characteristics of the Respondents**

The main demographic variables covered in the study were gender, age, level of education, experience as PSV drivers and the current driving routes as shown in the tables 3 below.

**Table 3 Demographic Characteristics of the Respondents**

Item		Number	Percent
Gender N=72	Male	69	95.8
	Female	3	4.2
Age N=72	18-29	12	16.7
	30-39	23	31.9
	40-49	25	34.7
	50-59	7	9.7
	60+	5	6.9
Education Level N=72	Primary	10	13.9
	Secondary	43	59.7
	Middle level	13	18.1
	College	6	8.3
	University		
Experience as PSV driver (Yrs.) N=72	0-4	11	15.3
	5-9	29	40.3
	10-14	19	26.4
	15-19	9	12.5
	20-24	4	5.6

#### 4.3.1 Demographic Variables of the Respondents

The respondents were made up of 69 male and 3 female drivers. The data revealed that a large proportion of PSV drivers were between the ages of 40 and 49 years that represented 34.7%. The number of PSV drivers reduced as their ages advanced with 9.7% at the age group of between 50 and 59 years and 6.9% above the age of 60 years. According to the data, majority of PSV drivers (59.7%) had completed their secondary education with only 8.3% of drivers in the study attaining university degrees. Majority of PSV drivers had an experience of between 5 and 9 years. This constituted 40.3%. Only 4 drivers indicated to have been PSV drivers for above 20 years constituting 5.6%. The findings of the study are discussed according to the objectives:

#### 4.4 The level of use of the Fine in Regulating Traffic Offences

This was the first objective of the study. In this section, the study describes the level of use of the fine to regulate traffic related offences. The researcher focused on secondary data that was obtained from Makadara Law Courts to establish the level and frequency of the use of the fine for the first half year period of 2017, 2018 and 2019. As was reported by NCAJ, 2016, fine is the most used form of sanction. This presentation confirmed the same. Table 5 summarizes the data for the period under study.

**Table 4: Number of Drivers fined and Amounts**

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

From Table 4 above, the number of fined drivers increased between the first half of the year 2017 and 2019. This increase of 2.4% confirms that the use of the fine is on the rise. Moreover, the amounts of the fine collected within the period under study also grew. Between the first half year of 2017 and 2018, the amount collected almost doubled and stood at an increase of 81.1%. Within the same period, the number of drivers who were fined had dropped by 0.8%. This indicates 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%. Therefore, the fine was not only commonly used, the severity was increased.

Moreover, 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. The results in the table 5 reveal that



the fine is highly used and its use is on the rise. 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.”*

#### **4.5 The Extent to which the Fine Influences Behavior Change**

This was the second objective of the study. To ascertain the extent to which the fine influences behavior change among fined drivers, the respondents in the study were asked several questions to establish this objective as discussed below.

##### **4.5.1 Offence committed and Fine Amounts Charged**

The respondents gave varied offences for which they were charged. From table 7 below the study established the most common traffic offences for which various fines were applied. Further revealed was that the variation of the fine amounts for individual traffic violation. The analysis also 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).

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. Table 5 below shows the variations in terms of amounts of fines charged for individual traffic violations.

**Table 5: Traffic offence Committed and Fine Amounts**

<b>Traffic Violation</b>	<b>Amounts (Kshs.)</b>	
	<b>Maximum</b>	<b>Minimum</b>
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>

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

The study has classified the various ways through which the fined drivers were able to raise the fine in table 6 below. 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.

According to Bogelein (2018), 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.

**Table 6: How Drivers raised the Fine**

<b>How the Fine was raised</b>	<b>Number</b>	<b>Percent</b>
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
<b>Total</b>	<b>72</b>	<b>100</b>

Moreover, the drivers gave varied responses on how they specifically were able to raise their individual fine amounts. The study found out that whenever the fines were low, the fined drivers were able to raise the fine without needing financial assistance or being kept in custody.

This indicates that some drivers perceive of the fine as so high. This may prompt them to bribe the police officer before they are charged in court.

Indeed every individual driver had an experience that they rather not have when arrested for traffic offences. There was also a common feeling of the fines being so high that individual drivers did everything to escape the court process including bribing police officers.

### 4.5.3 Time Taken to Raise the Fine

The study further sort to establish the duration taken by fined drivers to raise the fine. 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. 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.”*

**Table 7: Duration taken to raise the Fine**

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

#### 4.5.4 Instance of Re-arrests

Instances of re-arrests may indicate that the first fine experience has not instituted deterrence and thus compliance to the traffic rules. The study thus sort to establish the level of re-arrests among fined drivers within the last six months. Table 8 below shows the frequencies of re-arrests. 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 in the first instance does not deter the offender from future offending.

This observation is in agreement with what Bogelein (2018) had observed that, arrests and the fine have become so invisible to the outside world that society is unable to admonish the offender unlike a prison sentence which society continues to have a perception about.

Moreover, this is also in agreement with the observations of Oevermann, (2001) that individuals in a given social group often mobilize a common sense of understanding a phenomena 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.

**Table 8: Instances of Re-arrests**

<b>First</b>	<b>Re-arrests</b>	<b>Percent (re-arrests)</b>
<b>Fining</b>	<b>Yes</b>	<b>-</b>
<b>72</b>	<b>35</b>	<b>48.6</b>

#### 4.5.5 The fine and Adherence to Traffic rules

The study further sort to establish the extent to which the fine encourages drivers who have been fined to comply with traffic rules and regulations. Results revealed mixed responses on the role of the fine and adherence to traffic rules.

**Table 9: The fine and Adherence to Traffic rules**

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

From table 9 above, 51.4% of fined drivers indicated that the fine does not have any impact with regards to how they adhere to traffic rules in the future.

However, 12.5% of fined drivers indicated that the effect of the fine is always dependent on the driver and the circumstances of his arrest. They explain that the nature of their industry renders them susceptible to being arrested because of traffic violations and that their arrest or lack of it cannot be placed as intentional violation of the law. Therefore, the majority of the respondents indicated that the fine does not influence their future offending on the road.

#### 4.5.6 The Fine and Behavior Change

In finding out the extent to which the fine influences the behavior of fined drivers, the study asked drivers to indicate whether the fine as used affects their behavior. This was asked in addition to other indicators that had been asked earlier in order for the study to

make conclusive its findings on the objective of behavior change. Table 10 below summarizes the findings:

**Table 10: Influence of the fine on Behavior Change**

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

According to table 10 above, 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%).

## 4.6 Challenges and Opportunities in the Administration of the Fine

This was the third objective of the study. To find out the challenges and opportunities in the administration of the fine, the study asked several questions to the respondents. The data was analyzed and presented as shown below:

### 4.6.1 Preferences for Custodial, Split and Non-custodial sanctions

Table 11 shows that 95.8% of the interviewed drivers preferred the non-custodial sentence for traffic related offences while 4.2% preferred a combined sentence. None of the driver's preferred a custodial sentence. This finding means the fine is still the most preferred form of sanction and thus if improved can be the best form of punishment for traffic related violations.

**Table 11: Preference for Custodial, Split and Non-custodial Sanction**

Type of Sanction	Number	Percent
Non-custodial Punishment	69	95.8
Combined/split	3	4.2
<b>Total</b>	<b>72</b>	<b>100</b>

According to an interview with the magistrate, he observed that:

*“The law sets the required maximum fines for certain offences and sometimes sets a minimum amount depending on each case. Some infractions relating to road use, we fine the offender because if we confine them to serve time, the prison population will be huge.”*

The departure from custodial and combined sentence (4.2%), maybe also because of the stigma that comes with the former. This argument is consistent with O'Malley, (2010) that monetary punishment is perceived as less painful and less severe than a prison sentence. Moreover, Bogelein, (2018) also noted that the fine being peculiar, leaves little or no



damage to the individual offender. The individual offender remains unaddressed and thus “free.”

#### 4.6.2 Challenges in Administration of the Fine

The study having established the level of use of the fine in traffic offences, there was a need to establish the challenges that it faces and which may explain the inconsistencies on the influence of the fine.

Several challenges were identified by the respondents as the factors the hinder the efficient implementation of the fine in traffic violations. Table 12 summarizes the challenges that were identified:

**Table 12: Challenges in the Administration of the Fine**

<b>Challenges</b>	<b>Frequency</b>	<b>Percent</b>
Corruption	26	36.1
Too high fines	17	23.6
Inconsistencies with the fine amounts	15	20.8
Slow implementation of fine	6	8.3
Lack of a system of accountability	5	6.9
Limited flexibilities of fine	3	4.2
<b>Total</b>	<b>72</b>	<b>99.9</b>

From the above table, respondents identified corruption as a challenge in the administration of the fine 36.1% while the flexibility of the fine was identified as a challenge by 4.2% of the respondents.

According to the magistrate:

*“There have been reports of bribing of court officials and even police officers by offenders. However, the court always waits for a formal charge before it so that it can take action. Such allegations need to be investigated and the culprits be brought to court.”*

It is such instances of bribing of court officials, and police officers to defeat the objective of punishment that ensures violations against traffic rules continue. According to the prosecutor,

*“...we have instances where court officers and police liaise to even hide evidence, and take away court fines and other inappropriate unethical conduct that ensure the offender gets free. In most cases, the officers have been bribed to do so, thus defeating justice.”*

As such, the study found out that corruption among criminal justice officials was a key challenge in both administration of the fine and ensuring compliance to traffic rules and regulations.

#### **4.6.3 Opportunities in the Administration of the Fine**

The study has established that the fine system in Kenya has still several opportunities to be made better to increase deterrence among traffic violators while closing the loopholes that lead to its exploitation and corruption. This way, even road safety can be observed.

According to the prosecutor:

*“The reducing balance basis of the fine and imprisonment is not consistent. The parameters should be clear so as to capture well all factors. There is a need for an installment plan for offenders. If they do not have the fine at the time, they need to raise the fine in installments. This will allow them to get out and search for the fine money instead of letting their relatives to search for the money while they are inside. These are the things that need to be worked on.”*

According to the magistrate:

*“The fine ensures that our prison population does not burst. The only problems that need to be checked are the instances of bribery and corruption that arise between the CJS officers and the offenders. The patterns of fine utilization, collection, and enforcement are what need to change. In Kenya, the system is not completely harmonized and the variabilities are huge.”*

He further reaffirmed that:

*“There is need to develop a sound Fines Management Information and Monitoring System (FMIS) which needs to be used by all court systems in Kenya. In this system, offences related to traffic are put and always updated with their relative fine amounts and a system of monitoring and audit as well as the option of installment. This will improve on the management of the fine in general.”*

#### **4.7 Strengthening the Fine**

Most PSV agreed that the fine is the preferred sanction for traffic related offences (95.8%). However, as it is practiced today, it does not realize deterrence or maximum revenue collection for the government through courts.

Therefore, to strengthen the fine, the study has established that loopholes that lead to corruption should be closed. The fine can be paid through electronic money transfer rather than the actual money changing hands.

## **CHAPTER FIVE: KEY FINDINGS, CONCLUSIONS AND RECOMMENDATION**

### **5.1 Introduction**

This chapter provides a summary of the research findings, conclusions and recommendations and areas that require further research. This study sought to examine the role of the fine as a form of criminal sanction in policing traffic offences among drivers of public service vehicles. The study adopted a descriptive design research design with both snowball and purposive being used as sampling methods. A total of 72 PSV drivers who had been fined in the last six months were thus selected. 1 magistrate 2 prosecutors, 1 court clerk from Makadara Law Court were also selected for collection of key data. The study relied upon questionnaires and interview schedules to collect data. The

### **5.2 Summary of Findings**

In summary, the following were the findings of the study presented in line with the study objectives;

#### **5.2.1 The Level of use of the Fine in Regulating Traffic Offences among Drivers of PSV's**

The study relied on secondary data collected from Makadara Law Court for the period of first half of the year of 2017, 2018 and 2019. From analysis of the data, the study revealed that:

The fine was frequently used as sanction for traffic offences as was shown in the data and corroborated by the key informant.

The study further revealed that the fine amounts varied between the periods under study. Between the first half year 2017 and 2018, there was an increase in the total amounts collected representing an 88.1% rise and between 2018 and 2019; the increase in amounts

was up by 55.7%. Also, the number of drivers fined in the same period under study increased from 988 in 2017 to 1012 in the year 2019 for the period under study. However, the study also revealed that the number of female traffic violators among PSV drivers were on a steady drop within the time periods under comparison.

### **5.2.2 Extent to which the Fine Influences Behavior Change**

The study also sort to determine how the fine influences the behavior of fined drivers. From the analysis, the study established that there was a variation in the fine amounts for similar traffic offences which according to the key informant, was because of several circumstantial conditions at the time and with the specific offender.

Secondly, fined drivers indicated that they relied upon several sources from which they would raise the fine whenever they are charged. 38.9% of fined drivers relied upon their personal savings while 11.1% indicated that they were unable to raise the fine and thus served time in jail.

Thirdly, the duration taken to raise the fine varied depending on individual offenders. However, within one week, 27.8% of drivers were able to raise the fine while 4.2% would raise the fine by the fifth day. Still, those who were unable to raise the fine constituted 11.1% and would serve time in jail.

The study further revealed that 48.6% of drivers who had been fined in the last six months would be re-arrested for traffic violations while slightly above half (51.4%) would refrain from traffic violations and thus not get arrested. However, the study came short to establish whether their lack of arrest was because they had not been found.

In establishing whether the fine causes adherence to traffic rules and regulations, the study revealed that only 36.1% indicated that the fine ensures compliance. 51.4% of the respondents did not find a relationship between the fine and their compliance with traffic rules and regulations.

A majority of respondents (91.7%) indicated that the fine does not impact on their behavior towards conformity to the law or away from conformity to the law. However, 8.3% indicated that there was a change towards adherence to law after their fining experience.

### **5.2.3 Challenges and Opportunities in the Administration of the Fine**

Several challenges were identified through the study on the efficacy of the fine. Firstly, the study has revealed that instances of corruption (36.1%), the fines being high (23.6%) and inconsistencies with the fine amounts (20.8%) were the major challenges that influenced the fine and its use. Corruption at the point of arrest would mean that not all traffic violators reach the court and as such, the state may be missing revenue as well as offenders not being able to appreciate the need to obey traffic rules and regulations.

The fine however still has opportunities for its further development. The study has established that if a system of fine management and monitoring system with the option of paying fines in installments, it will help improve the efficiency of the fine administration. Moreover, a harmonized fine system will create uniformity across jurisdictions and thus making the fine more acceptable to all.

### **5.3 Conclusions**

The fine is one of the sanctions by the CJS and serves to meet the reduction of prison population objective. It is also meted fast and within a short time frame. While substantial literature on the fine exists in the western countries, not much is available by way of sound research in this area with a bias to Kenya. Although it is the most common form of sanction, little theoretical backing exists to show its role particularly in Kenya. Its implementation so far is driven by the need to reduce punishment to monetary terms without knowing its impact on the individuals so fined.

The findings of this study are thus groundbreaking to the extent that they contribute to fine debate, its role and how it creates a society that has reduced the concept of the fine penalty as a way to police human conduct. It is equally appreciated that certain spheres of relationships needs to employ the fine as a means of punishment (and such may include the arena of traffic offences), the process of implementing the same should be clearly thought out, make the fines determinate, and make it instant if possible to curb the corruption problem.

#### **5.4 Recommendations**

Based on the findings and conclusions of the study, the following recommendations are made:

1. There is need to have the fine penalties be determinate that may be revised from time to time. This will ensure that PSV drivers and others know the specific amounts. It will also reduce instances of bribery and corruption in the process of fining.
2. There is need to develop a Fines Management and Information System with the option of payment of fines in installments. This will ensure that traffic fines are captured to reduce the levels of bribe for court officials.
3. There is need to provide a framework within which judicial officers can exercise their discretion while using the fine as a sentencing option in a manner which is, impartial, accountable, transparent and objective and in a manner that promotes consistency and uniformity in the fine as a sentence in Kenya.
4. To ensure adherence to traffic rules, the fine as a sanction needs to address the equality and the severity function. A good fine system should be structured such that it does not disproportionately harm the poor.

5. PSV's drivers need to have their licenses withdrawn for some determinate time if they are found five times violating traffic rules. This can only be done by establishing a database (Integrated Fines Management System) that links the court records of traffic offenders, the police and the NTSA. This will also address the lack of a system of accountability question.
6. There is a need to reduce unwarranted, disparity, increase certainty and uniformity; and promote proportionality while using the fine as a sentence including educating and engaging members of the public and other stakeholders on the fine as sentencing system to improve its role and effectiveness.

### **5.5 Suggestions for further Research**

This study focused on the role of the fine as a criminal sanction in policing traffic offences among PSVs drivers. A focus on the role of the fine in other forms of crime like crimes against persons and property would bring another dimension of the use of the fine. It will also help reinforce the recommendations that have been made in this study.

From the findings of this study, the role of the fine as a sanction has been identified as still having several challenges that needs addressing. A comparative study of the fine would be an area that needs to be done between traffic related offences and other crimes that also make use of the fine. This will establish the violations that are clearly and effectively addressed by the fine.

Thirdly, this study relied on PSV drivers as the primary respondents. Future studies could be done on the same area but with private vehicle owners. This will establish the variabilities of the use of the fine to police both the private vehicle owners and PSV drivers.



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The Traffic Act Cap 403 Laws of Kenya (Revised, 2012)

The Penal code Cap 63 Laws of Kenya

Legal Notice No. 161 of 2003

## **APPENDIX 1. NTSA Offence and Fine Schedule**

**National Transport & Safety Authority (NTSA), new list of minor traffic offences and the corresponding fines.**

1. Driving a vehicle that does not have identification plates affixed or if they've been placed incorrectly – Ksh. 10,000
2. Driving on or through a pedestrian walkway or pavement – Ksh. 5,000
3. Causing obstruction on the road with your vehicle in a manner that inconveniences other motorists or prevents flow of traffic – Ksh. 10,000
4. Failure of a driver to obey traffic signs – Ksh. 3,000
5. Failure of a driver to stop when asked to do so by a police officer in uniform – Ksh. 5,000
6. Driving without a valid driving license that corresponds to the class of the vehicle being driven – Ksh. 7,000
7. Failure to renew a driving license -Ksh. 1,000
8. Failure to produce a driving license on demand – Ksh. 1,000
9. Driving while using a mobile phone – Ksh. 2,000
10. Learner failing to exhibit 'L' plates on front and rear of the vehicle – Ksh. 1,000
12. Failure of a vehicle to carry lifesavers – Ksh. 2,000
13. Failure to display lifesavers in the case where any part of the vehicle remains on the road in a position to obstruct or cause obstruction – Ksh. 3,000

14. Failure of vehicle to have seat belts – Ksh. 10,000 for every seat that doesn't have a seat belt or if the seat belts are not of the proper standard.
15. Failure to wear a seat belt while the vehicle is in motion -Ksh. 500
16. Driving a PSV while being unqualified -Ksh. 7,000
17. The driver of the PSV who lets an unauthorized person drive – Ksh. 5,000
18. An unlicensed individual acting as the conductor or driver of the PSV – Ksh. 5,000
19. PSV picking and dropping passengers at areas that are not the designated bus stops – Ksh. 1,000
20. Failure to fit prescribed speed governors in vehicles – Ksh. 10,000
21. Travelling with a part of the body outside a moving vehicle – Ksh. 1,000
22. Touting – Ksh. 3,000
23. Motorcycle rider riding without protective gear -Ksh. 1,000
24. Motorcycle passenger riding without protective gear – Ksh. 1,000
25. Rider of a motorcycle carrying more than one passenger – Ksh. 1,000
26. Failure to keep seat belts in a clean and wearable condition – Ksh. 500

For speeding, the fines are as follows:

Exceeding the speed limit as prescribed to the class of the vehicle by;

- 1-5 kph: Ksh. 500



- 6-10 kph: Ksh. 3,000
- 11-15 kph: Ksh. 6,000
- 16-20 kph: Ksh. 10,000

Exceeding the speed limit shown on a traffic sign by;

- 1-5 kph: Ksh. 500
- 6-10 kph: Ksh. 3,000
- 11-15 kph: Ksh. 6,000
- 16-20 kph: Ksh. 10,000

Source: (<https://citizentv.co.ke/news/list-instant-fines-for-minor-traffic-offences-in-kenya-211985/>)

**APPENDIX 2: Questionnaire: PSV Drivers**

This questionnaire seeks to gather information on The Role of the Fine as Criminal Sanction among PSV Drivers in Nairobi City County. Please respond to these questions honestly. All information given will be treated with utmost confidentiality.

**SECTION A: Background Information**

**A1. Gender**

Male  Female

**A2. Age (Years)**

.....  
.....

**A3. What is the highest level of education attained?**

None  Primary  Secondary  Middle level College   
University

**A4. How long have you worked as a PSV driver?**

.....  
.....

**A5. What is your current driving route?**

.....

.....

**SECTION B**

**B1.** What offense were you fined for?

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**B2.** How much was the fine

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**B3.** How did you raise the fine?

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.....  
.....

**B4.** Kindly describe your fining experience?

.....  
.....  
.....  
.....

**B5.** After how long were you able to raise the fine? (I raised the fine on the)

1 <sup>st</sup> day	2 <sup>nd</sup> day	3 <sup>rd</sup> day	4 <sup>th</sup> day	5 <sup>th</sup> day

**B6.** Have you been rearrested for a traffic offence?

YES

NO

If YES, please explain

.....  
.....  
.....  
.....  
.....

If NO, please explain

.....  
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.....  
.....

**B7.** What measures have you taken to avoid committing a traffic offence in future?

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**SECTION C**

**C1.** In your opinion, should traffic offences attract custodial or non-custodial sanctions?

Custodial  Combined/split  Non-custodial

Please explain

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.....

**C2.** What do you think should be done to ensure that public service drivers obey traffic rules?

.....  
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.....  
.....

**C3.** Do you think fining encourages drivers who have been fined to obey the law?

YES  NO

Please explain your answer

.....  
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.....  
.....  
.....

**C4. Does fining influence behavior change among PSV Drivers in Nairobi City County?**

YES  NO

Please explain your answer

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**C5. What challenges do you see with the administration of the fine as a sanction?**

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**C6. What do you think should be done to strengthen fining as a criminal sanction?**

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.....

Thank you.

**APPENDIX 3: Interview Schedule; Judicial Officers**

This questionnaire seeks to gather information on The Role of the Fine as Criminal Sanction among PSV Drivers in Nairobi City County. Please respond to these questions honestly. All information given will be treated with utmost confidentiality.

**SECTION A: Background Information**

**A1. Gender**

Male  Female

**A2. Age in Years**

.....  
.....  
.....  
.....

**A3. State your highest level of education attained?**

.....  
.....  
.....  
.....



**A4.** What is your experience as a magistrate/prosecutor/court clerk?

Below 1 year

Between 1-3

Between 3-6

Between 7-10

10+ years

**A5.** How long have you served in the traffic division/handled traffic offences?

.....  
.....  
.....  
.....

**SECTION B**

**B1.** What proportion of the fined drivers are able to raise the fine in?

1 <sup>st</sup> day	2 <sup>nd</sup> day	3 <sup>rd</sup> day	4 <sup>th</sup> day	5 <sup>th</sup> day

**B2.** What proportions of fined drivers are remanded or serve another sentence other than the fine?

**B3.** In general, how necessary is the following information when you are sentencing someone to a fine? Please tick one box

next to each statement.

		Almost always necessary	Necessary in most cases	Necessary in about half the cases	Necessary in few cases	Almost never necessary
Offenders' criminal records.....	criminal					
Offenders' family ties/community ties.....	family					
...						

Offenders' income.....

Offenders' employment status.....

Offenders' assets.....

Offenders' financial expenditure...

**B4.** How much does the ability to raise the fine impact on the ruling of a fine?

**B5.** What could be done to ensure that the fine addresses offender behavior?

**B6.** Do you think the fine is helpful in controlling behavior among PSV drivers?

**B7.** What do you think are the challenges in the administration of the fine?

**B8.** Are there instances when custodial sentence is used for traffic offences when non-custodial sentence was an option?

**B9.** What kind of non-custodial sanctions might be appropriate for less serious but prolific offences?

**B10.** What do you consider to be the main disadvantages of fines as a sentence?

**B11.** What do you consider to be the main advantages of fines as a sentence?

**B12.** What improvements can be made to increase the effectiveness of existing fines?

Thank you.

**APPENDIX 4: Observational Checklist**

This checklist has been developed to aid the researcher to gather information on The Role of the Fine as Criminal Sanction among PSV Drivers in Nairobi City County. The researcher intends to gather data from the Makadara Law Court (Traffic division) on the frequency of use of the fine. All information given will be treated with utmost confidentiality.

**Frequency of the Use of the fine as Punishment for Traffic Offences among PSV drivers.**

January- June 2017	gender	List of Traffic Offences (from the court records)							Amounts	Total
		1	2	3	4	5	6	7		
January	M									
	F									
February	M									
	F									
March	M									
	F									
April	M									
	F									
May	M									
	F									
June	M									
	F									
<b>Total</b>										

January- June 2018	gender	List of Traffic Offences (from the court records)							Amounts	Total
		1	2	3	4	5	6	7		
January	M									
	F									
February	M									
	F									
March	M									
	F									
April	M									
	F									
May	M									
	F									
June	M									
	F									
<b>Total</b>										

January- June 2019	gender	List of Traffic Offences (from the court records)							Amounts	Total
		1	2	3	4	5	6	7		
January	M									
	F									
February	M									
	F									
March	M									
	F									
April	M									
	F									
May	M									
	F									
June	M									
	F									
<b>Total</b>										

What is the age group that is often fined for traffic offences among male and female drivers?

Age Group	Male	Female
18-23		
24-29		
30-35		
36-41		
41-46		
47-52		
Above 52		

**Comments:**

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**Observer**      **Signature** \_\_\_\_\_ **Date**

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**Other Comments (attach additional sheet if necessary):**

## APPENDIX 5: Data Collection Authorization: UNIVERSITY OF NAIROBI



UNIVERSITY OF NAIROBI  
DEPARTMENT OF SOCIOLOGY & SOCIAL WORK

Fax 254-2-245566  
Telex 22095 Varsity Nairobi Kenya  
Tel. 318262/5 Ext. 28167



P.O. Box 30197  
Nairobi  
Kenya

26<sup>th</sup> July, 2019

TO WHOM IT MAY CONCERN

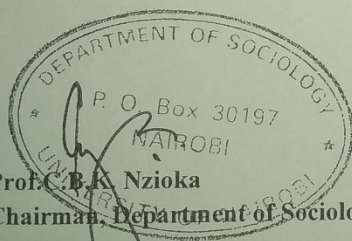
**PAVEL OKOTH SIGU - C50/86063/2016**

Through this letter, I wish to confirm that the above named is a bonafide postgraduate student in the Department of Sociology & Social Work, University of Nairobi. He has presented his project proposal entitled; **“Effectiveness of the fine as a criminal sanction;A Case of traffic offence among drivers of public service vehicles in Nairobi County.”**

**Pavel** is required to collect data pertaining to the research problem from the selected organization to enable him complete his project paper which is a requirement of the Masters degree.

Kindly give him any assistance he may need.

Thank you.



**Prof. C. B. K. Nzioka**  
Chairman, Department of Sociology and Social Work



**APPENDIX 6: Data Collection Authorization: JUDICIARY**

Telephone Nairobi 2221221  
Email: [chiefregistrar@court.go.ke](mailto:chiefregistrar@court.go.ke)



CHIEF REGISTRAR'S CHAMBERS, JUDICIARY  
SUPREME COURT BUILDING  
P.O. Box 30041 - 00100  
NAIROBI.

When replying please quote

REPUBLIC OF KENYA

14<sup>th</sup> August, 2019

CRJ 46/1

THE JUDICIARY

Mr. Sigu Pavel  
University of Nairobi  
P.O. Box 30197  
NAIROBI




RE: PERMISSION TO CARRY OUT RESEARCH FOR MASTERS PROJECT

Thank you for your letter of 31<sup>st</sup> July, 2019.

Your request to carry out a research on "*Effectiveness of the Fine as a Criminal Sanction*" at Makadara Law Courts has been granted.

By a copy of this letter the Head of Station is requested to accord you the necessary assistance.

for 

ANNE A. AMADI, CBS  
CHIEF REGISTRAR OF THE JUDICIARY

Cc: The Head of Station  
Makadara Law Courts  
NAIROBI

aaa/ckk