

THE COMMISSION ON ADMINISTRATIVE JUSTICE
"OFFICE OF THE OMBUDSMAN"



Hata Mnyonge ana Haki

ADVISORY OPINION ON ENHANCING ROAD SAFETY MEASURES

1. INTRODUCTION

The Commission on Administrative Justice, also known as the Office of the Ombudsman, (hereinafter referred to as the Commission) is a Constitutional Commission established pursuant to Article 59 (4) and Chapter 15 of the Constitution of Kenya, as read with the Commission on Administrative Justice Act, 2011.

The Commission, alongside other constitutional commissions, has the mandate to protect the sovereignty of the people, while also ensuring observance by state organs of fair administrative action, democratic values and principles as provided by Article 249(1) of the Constitution, on which the Constitution is based.

Further, Article 59 (2) (h) and (i) of the Constitution, and Section 8 (a) and (b) of the Commission on Administrative Justice Act grant the Commission powers to investigate any conduct of State officers, or any act or omission in public administration that is alleged or suspected to be prejudicial or improper, or to result in any impropriety or prejudice. Section 8(h) of the Act empowers the Commission to issue advisory opinions or proposals on improvement of public administration, including review of legislation, codes of conduct, processes and procedures. Section 2(1), on the other hand, empowers the Commission to deal with a decision made or an act carried out in public service or a failure to act in discharge of a public duty.

The Commission notes the increase of accidents resulting to loss of lives and injuries occurring along the Nairobi-Nakuru Highway road. The occurrence is specifically along the stretch between Ngarariga, Lari, Kimende and Kinungi; attributable to the foggy weather. On 2nd August 2023 it was reported that a series of accidents were witnessed in the morning including one that involved 10 vehicles. It is worth noting that the section has foggy atmospheres in the morning and evening which are reportedly worse more so during the month of June, July, August. Driving in bad weather and or through foggy atmospheres is attributable to a majority of traffic accidents which poses a real danger to the driver, passengers and pedestrians (road users).

Therefore, the Commission, in line with The Traffic (Amendment) Act, 2015 illuminates the need to promptly heighten stringent road user safety measures.

The legal framework for road safety in foggy conditions generally falls under existing traffic and road safety laws and regulations that would govern accidents and rules of the road.

The Commission posits that Kenya has sufficient road safety laws and regulations *inter-alia*; the Traffic Act Cap 403, National Transport and Safety Authority (NTSA) Act, 2012, The Traffic (Amendment) Act, 2015 and hence the relevant agencies should enhance their implementation and enforcement mechanisms. Additionally, it is appreciable that whereas the National police Traffic Department core obligation is to ensure road safety including rules of the road, road signage, and traffic enforcement; the National Transport and Safety Authority (NTSA) is responsible for promoting road safety, regulating the road transport sector, and coordinating various aspects of road safety campaigns and initiatives.

On this account, it behoves the government through the mandated institutions/agencies notably the National Transport & Safety Authority; the National Police traffic Department, Kenya National Highway Authority among others are obligated to closely work together to achieve the National vision for road safety "safe roads for all users" espoused under the National road safety plan 2022-2025.

In line with the foregoing the Commission advises that:

a) The National Transport & Safety Authority

- i. Conduct a research and audit the road safety measures of the specified Ngarariga, Lari, Kimende & Kinungi area and subsequently any other area similarly affected.
- ii. Develop and implement an impactful safety strategy which would include erecting a reflective signage with clear exhaustive safety measures as you approach the stretch.
- iii. Intensify road safety education awareness programmes.
- iv. Undertake any other long-term and sustainable road safety measures

b) The Kenya Police Traffic Department

- i. Conduct an in-depth investigation on the cause of the rampant accidents with appreciation of other contributory factors i.e. Vehicle road worthiness, road users' indiscipline among others.
- ii. Intensify procedural enforcement function to prevent occurrence accidents in line with the Traffic Act Cap 409.

c) The Kenya National Highway Authority

- i. Undertake road safety audits and ensure impactful interventions are carried out including erecting signage, mounting retro-reflective supplements and widening the paved shoulders.

DATED this 18th day of **September 2023**



HON. FLORENCE KAJUJU, MBS
CHAIRPERSON OF THE COMMISSION