



# **ROLE OF THE JUDICIARY IN REDUCING ROAD ACCIDENTS**

# Introduction

- ▶ Public roads have in the recent years been infested and overwhelmed by **most devastating** and **disastrous road accidents** - with the victims either **suffering permanent disabilities** or even **killed**.
- ▶ Most of the **victims productive** men and women who are also **breadwinners** of their families.
- ▶ Road accidents **impact negatively** not only on the **economy** but also on the **family institution** by causing **unnecessary orphans**.

# Introduction

- ▶ In this regard, socio-economic **human rights** including the right to life have been **violated**.
- ▶ All this is at the hands of either **negligent, reckless or drunken drivers**.
- ▶ There is therefore a need for a **concerted effort** by all stakeholders to **combat the scourge**.

# Judicial intervention through adjudication and sentencing

## Legal Framework (Key Laws and Regulations)

1. The Road Traffic Act No: 5 of 2007
  2. Road Transportation Act 6 of 2007
  3. The Road Traffic Regulations Notice of 2018
  4. Criminal Procedure and Evidence Act 67 of 1938 as amended ( S.313 on sentencing)
- ▶ The **overriding principle** in the administration of justice is that even before rate of commission of a certain class of offence reaches a crisis level the courts must **adopt stringent measures** by *inter alia*:
    - ▶ Prioritizing serious traffic cases
    - ▶ adopting speedy trials
    - ▶ passing of stiff and deterring sentences (to send a strong message).

# Case for Manzini Magistrates Court

- ▶ Indeed **stringent measures** have been **adopted**.
- ▶ Resolution that cases of **drunken driving** and **culpable homicide** only be heard by the two available **Principal Magistrates** for **purposes** of giving them **special attention** including **passing of effective** and **deterrent sentences**.
- ▶ **Effective sentences** have been passed **consistently**. Maximum fines of up to **E5 000.00** have been passed in respect of driving under the influence of alcohol.

# Continuation...

- ▶ In **serious cases of culpable homicide**, deterring sentences including **custodial sentences** have been **imposed**. See **The King Vs Stephen Shuping – TM 361/2024**.
- ▶ **Offenders** and **members of the public** in attendance are **educated** in every court session on the adverse **impact of negligent / reckless** and **drunken driving**, including the **need to comply** with all the traffic laws.
- ▶ This has yielded **positive results** in that serious road accidents have shown a considerable **decline**.

# Other Measures

▶ **Suspension of Licenses upon conviction (S.42(1) and offences involved:**

1. Reckless / negligent driving
2. Inconsiderate driving
3. Driving under the influence of liquor or drugs
4. Driving without the owner's consent
5. Misuse of government vehicles
6. Providing false information
7. Falsifying registration marks

# Duration of suspension

- ▶ First time offenders – At least 3 months
- ▶ Second time offenders – At least 1 year
- ▶ Third or subsequent offender – At least 5 years
- ▶ NB: **suspensions peremptory** (due to usage of the word ‘shall’ by the statute)
- ▶ NB: Suspensions **not automatic** but must be applied for notice by the prosecution – to avoid prosecution by ambush.



# Disqualification from obtaining a license- s.42(2)

- ▶ Non license holders disqualified from obtaining one upon conviction for driving without a license.

## **Duration of disqualification**

- ▶ First time offenders – At least 3 months
- ▶ Second time offenders – At least 1 year
- ▶ Third or subsequent offender – At least 5 years

NB: Need for transport operators and drivers to be educated by the police and other stakeholders.

- ▶ Also need for surveillance cameras on the public roads – starting with the cities and towns.



# Proposed amendments

- ▶ Increase existing sentences.
- ▶ Provide both **maximum** and **stipulated minimum** sentences.
- ▶ Provide for a clause **prohibiting suspension** and **postponement of sentences** in respect of the most serious offences under the traffic Act.
- ▶ Rectify erroneous **defects of Section 122(6)** of the **Traffic Act**. (Provides for sentences in respect of Section 90(1) – **a non-existent section**. Also refers to **Subsection(1)** **without** mentioning the **actual section**).
- ▶ The penalty clause must provide for **upgraded sentences** for **non first time offenders**.
- ▶ **Accidents must be classified or categorized** in accordance with their **seriousness**.
- ▶ NB: Very strong **lobbying** of all strategic **stakeholders** including MPs must be made.

# Challenges and Recommendations

- ▶ **Lack of specialised Traffic Courts** (their establishment is proposed to ensure consistent and uninterrupted traffic court sessions including provision of specially trained personnel).
- ▶ Infrastructural challenges – **lack of adequate court rooms** (more court rooms needed).
- ▶ **Lack of technological resource facilities** such as computers and electronic recording systems (desperately needed).
- ▶ **Lack of uniformity** in applying the laws relating to sentencing (introduction of stipulated minimum sentences as proposed above, can mitigate this challenge).
- ▶ **Demise of weekends and holidays courts** (need to be revived).

**Thank you.**

