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KENYA CIVIL AVIATION REGULATIONS CHALLENGED IN COURT

The "Dream of Human Flight", so highly touted by the Wright brothers, has turned into a nightmare for Kenyan aviators as hapless KCAA staff are overwhelmed trying to enforce the overly detailed and disorganized KCARS. Formerly routine paperwork is now being subjected to in depth scrutiny and unnecessary red tape as overburdened inspectors and employees are trying to adhere to performance contracts and make no mistakes. As feared by the stakeholders, micro-control mechanisms have been imposed on Kenyan aviation in 1400 pages of rules and penalties. Originally intended to appease the ICAO with airtight control of international civil aviation, the drafters of the KCARS made liberal use of the little word "ALL". Hundreds of rules begin with "All aircraft shall" or "All aerodromes must", without any distinction as to size, function or use. The Boeing 777 is lumped together with the Piper Cub. Small bush airstrips used by charter flights seem to be expected to have the same level of staffing, security and bureaucracy as the large international airports - Manuals, Managers, X-ray machines, you name it. To top it off, all aspects of aviation in Kenya have been criminalized, from failure to renew a licence, to forgetting to advise a change of address, to not fencing even the smallest bush airstrip, to having a torn windsock..... Smoking a cigarette on the apron can land you in jail. And unlike other countries, here the prosecutors are the Police and the Judges - persons who may have never flown in an aircraft. Frightening thought.

Essentially, East African aviation is now being regulated with a 'one-size-fits-all' system. It's simple to apply, but it's grinding aviation to a halt. For example, all Kenyan holders of Air Operators Certificates must now be "re-certified". That means new 'manuals', new training methods and very strict application of all sorts of rules that make sense with airlines like Kenya Airways, but not with operators of small Cessnas or Pipers. The passenger of a Cessna 182 can now relish in the thought that he is now much safer as the door through which he entered the aircraft is now clearly labelled in English and Swahili: "EMERGENCY EXIT", just like in that Airbus. (-:

KCAA staff has resorted to the "CYA principle" and are interpreting every rule and definition to the letter, avoiding any semblance of lateral thinking. As a result, even the most routine applications for any sort of licence, permit or unusual aviation activity are being shunted around from department to department because now several sections of KCAA must give their OK before a piece of paper is granted. Operators and pilots are unanimous that the bureaucracy created by KCAA is not only unnecessary, but fundamentally fallacious and counter-productive. And that in a day and age where organizations like FAA and the EASA are offering rewards to those who point out simpler ways of regulating aviation. Unfortunately, the Kenyans fell into the same trap that slowed down economic growth of countries like India and Egypt for a hundred years, before leaders from those countries realized that "micro-control" of all human activities is counter-productive and hinders development. India, China, Egypt, Russia and many other countries in which centralized control was practiced before, have all relaxed their systems and are now experiencing above average economic growth. Kenya is "on the other bus".

Kenyan aviation stakeholders have gone to the High Court over the KCARS, pointing out that operators and pilots are not "against Regulations per se" but that the regulations must be reasonable and not damage their livelihood and injure the economy. The Kenya Association of Air Operators that lodged the suit contends that in meetings with the Ministry of Transport in 2008 it was agreed that certain regulations that were injurious to air operations would be given blanket exemptions and extracted from the KCARS. This agreement was simply ignored by KCAA and the Authority steamrolled ahead without regard to the warnings of the stakeholders. The KCARS were gazetted into law in 2008. KCAA, in its defence, keeps pointing to the ICAO as a culprit, saying that Kenya must adhere to international regulations. Stakeholders have retorted many times that ICAO Regulations are intended to guide primarily international commercial aviation and also domestic operations for commercial aircraft weighing more than 5700 kg AUW. Yet, KCAA applies the stringent regulations intended for airliners to even the smallest airplane or airfield.

Meanwhile, the ICAO conducted an audit of the KCAA in late 2008 and concluded that the KCARS, as written, are injurious to General Aviation and threaten to suffocate the sector. ICAO recommended relief.

KCAA recently approached the stakeholders and a committee was established to review the KCARS and come up with a set of parallel regulations for domestic operation of aircraft under the AWW of 5700 kg. The Committee, consisting of KCAA, Kenya Association of Air Operators and Aero Club delegates, will deliver its report to Ag. Director-General Nicholas Bodo in three months. Issues to be included are the operation of gliders, home-built aircraft, microlights, balloons, domestic operations of charter flights, bush airstrips, etc.

It is hoped that this will lead to a more reasonable approach toward regulating light aviation in East Africa and bring some hope into the industry.

NEW SYSTEM OF CHARGING NAVIGATION FEES COMING "SOON"

KCAA on 28 October 2008 unveiled a proposal to revise the system of charging Air Navigation Fees. KCAA needs money, that is clear, and it needs it because it is operated on a so-called 'cost recovery basis', without an upper limit or any accountability to those who have to pay. This was not new as the KCAA had already attempted to introduce more fees in 2002 and again in 2007. The new ANS system, derived from the ICAO method of charging in accordance with a complex formula based on aircraft weight and distance flown by the aircraft in the FIR, is considered more fair than the present method of collection in which only those who fly into or out of an airport with a control tower and AIS office are charged. Aircraft flying into or out of unmanned aerodromes essentially pay no Nav Fees because there is no way for KCAA to collect. Of course, this also brings up the issue of "Navigation Fees" for aircraft flying in accordance with VFR. The vexing question is: 'Who is doing the navigating - the pilot or KCAA'?

The KCAA proposal, apparently to be implemented in June 2009, contains a special 'Deal' for aircraft weighing less than 2500 kg. Such smaller, mostly "private" aircraft would be subjected to a yearly fee. The fee was pegged at KShs. 50,000 in October 2008, but after complaints from stakeholders, reduced to KShs. 30,000. The annual fee is to be paid by all aircraft at C of A Renewal time. This would simplify things a lot for private operators who do not have staff to run around and do flight planning and pay ad hoc fees for them at the AIS offices of manned airports. In many countries, Navigation Fees are either not charged at all (e.g. USA) or small aircraft are not charged (e.g. Canada). This is part of an effort by those Governments to promote aviation and protect the grassroots of flying, without which aviation would be dead. KCAA has so far not been able to see that logic.

Tanzania introduced the weight and distance formula in July 2007, but it only applies to 'foreign-registered aircraft'. That, of course, is contrary to ICAO SARPS and also against IATA rules. It also led to countless arguments at the fee collection points as TCAA attendants, not well-versed in algebra (the formula requires derivation of a square root. Remember how to do that by hand?) tried with some difficulty to calculate the applicable fee. Hopefully this scenario will be avoided in Kenya where KCAA stations are now computerized. In that context it is also hoped that the collection of KCAA fees will soon be taken away from the Kenya Revenue Authority and located where it belongs - the KCAA. The savings in staff and hassle would be immeasurable.

KCAA HOLDS SENSITIZATION WORKSHOP ON AERODROMES

The KCARS - AERODROMES REGULATIONS were recently gazetted, over the objections of the aviation community who warned that in Kenya, where 95% of all its 600+ airports are 'bushstrips', such demanding regulations cannot work. Yet, in its wisdom, KCAA ignored this and forged ahead, advising aircraft and aerodrome operators that "all airports" must be "licenced" or "certificated" (depending on size), and that it is an offence to operate an airstrip without KCAA permission. There is no leeway, like there is in the USA, Canada, Australia and Europe, where the 'unregistered' and 'unlicenced' airstrip is part of the system. In those countries, unlicenced airstrips can simply be used "at the pilot's discretion".

At a recent workshop in March, where KCAA staff unveiled the implementation of the new Aerodromes Regulations, most of the organizations that operate airports and airstrips in Kenya were not represented or even invited. That includes the biggest airstrip owners, such as Kenya Wildlife Service, the Missions, the County Councils, the tea companies and farmers, as well as camps and lodges. KCAA staff explained that they have the capacity to "inspect" each of the 600+ airstrips in Kenya annually, that all airstrips must have certain basic equipment, Operations Manuals, Security Manuals and various "airport committees" must be in place, and that airstrips must be secured (i.e. fenced). It remains to be seen whether or not KCAA will enforce this, has the capacity to enforce it, or whether the generous prison sentences for non-compliance will also be applied to errant officials in charge of municipal strips. It is not even clear if KCAA even knows the location of hundreds of little bushstrips in the more remote areas of Kenya, let alone has the wherewithal and funding to send inspectors to those places. It is also not clear who in the various county councils or ranches will write the security manuals, obtain annual approvals from the National Environment Management Authority, or buy the mandatory windsocks. Many of these remote airstrips experience one or two aircraft movements a month.

KCAA REJECTS KENYAN INSURANCE CERTIFICATES

Reports are in that a commercial air operator who was renewing a lease agreement of an aircraft at KCAA, had his Kenyan insurance certificate rejected by the Air Service Licencing Branch. The "Yellow Certificate", the certificate of insurance issued by the Kenya Association of Insurers (AKI) and that every aircraft operator must have if he wants his C of A renewed, was found not to be acceptable because the wording on the Certificate was "The aircraft is insured under the requirements of the Civil Aviation Insurance Regulations". The KCAA Inspector insisted that the wording should include the word "Kenya" as in "Kenya Civil Aviation Insurance Regulations". He also insisted that the precise nature of the cover (e.g. "Third Party") had to be specified, rather than just stating that the "aircraft is insured as per the requirements of the Civil Aviation Insurance Regulations".

All aircraft operators are warned to check with their insurance companies to confirm that the "Yellow Certificates" are in fact still acceptable to KCAA. Meanwhile, a complaint is being lodged with the Director-General of KCAA that such needless red tape, that only results in additional hassle and repeated trips to KCAA HQ, is not conducive to smooth air operations. All pilots and air operators are asked to relate any similar experiences of harassment or mindless red tape by KCAA staff to the Kenya Association of Air Operators and/or the Aero Club of East Africa. The anecdotes are collected and will be forwarded to the Director-General and the Consumer Protection Department of the KCAA for their edification.

AOC NEWS

The Wilson Airport Air Operators Committee is vibrant and no issues are taboo. Under the able Chairmanship of Capt. Gad Kamau, the AOC is deliberating monthly on all topics affecting the Wilson community, from potholes to fuel theft, from illegal buildings to errant inspectors. Recently it was re-affirmed at the AOC meeting that air operators are only obligated to supply a maximum of four flight manifests prior to departure and after arrival - one for the police, one for immigration, one to customs and excise and one to the apron control. Other hot topics include some that have been on the Agenda for twenty years: a Ground Frequency for Wilson Airport, a new Terminal, Corruption, inadequate runway lighting, uncontrolled car parking, etc.

Members of the AOC include not only the commercial air operators but also the Airport Manager, the Police, Immigration and KRA, as well as the fuel companies and the Aero Club. It is refreshing to see that many issues that were formerly off limits can now be openly debated, and often remedial action is being found. All aircraft owners and operators are urged to attend these 'open' AOC meetings. Dates of the next meeting will be advised.

AIRFIELDS DATA BASE MAKING PROGRESS

The airfields data base initiated by the Aero Club of East Africa is taking shape on the Club's web site www.aeroclubea.net. It is effectively a computerized airfields manual, showing mainly Kenyan airfields, including details like co-ordinates, runway headings and lengths/widths, operator details, any cautions, as well as photographs. So far some three hundred Kenyan airfields and airports are available 'on line'. The service is free.

All pilots are requested to assist in particular with aerial photos of the airfields. Please forward any pictures of the runways and also 'ground shots' to Alexander Galley who is actively assembling the latest airfield data for the Manual on behalf of the Aero Club. His email address is: alex_galley@hotmail.com.

The Aero Club wishes to acknowledge the kind assistance by Tad Watts of Boskovic Air Charters in providing details of many airstrips in Kenya. The hard work of site moderator Daniel Szlapak, and of Alexander Galley, is also greatly appreciated by the Club.

AERO CLUB INVESTIGATES WEBCAM WEATHER REPORTING SYSTEM

One of the greatest problems with aviation in Kenya is the lack of accurate meteorological data and weather forecasting. The Met Department only provides rudimentary information and TAF's and METARS are only available for HKJK (Jomo Kenyatta International Airports) and HKMO (Moi International Airport). There are some web sites, mostly based in Europe and USA, that publish medium range forecasts and also satellite photographs (see "Links" page on the Aero Club web site www.aeroclubea.net), and recently the "Metmonkey" site began to publish African and Kenyan weather information.

A new system, being contemplated by the Aero Club Committee, is a network of "webcams" placed strategically on cell phone towers throughout Kenya. The photographs taken by the webcams would be

updated every two minutes and users could click on a "Webcam Weather Site" for Kenya, to look at the latest weather picture in the general area to which they are flying. A good 'live' example can be found by checking the Rift Valley Academy webcam at Kijabe that shows fresh photos of the Longonot - Rift Valley area every two minutes. Check <http://kijabe.org/cgi-bin/longocam.pl>

The photo gives the pilot (with computer access) a pretty good idea what the weather is in the Rift Valley. The concept is, to place such webcams in places that are notoriously giving headaches to VFR pilots, such as the Aberdare Corridor, Nairobi's Ngong Hills, the Mau Escarpment, etc. Costs and modalities have to be discussed first and you will be kept updated on progress on this project.

EUROPE SEES SENSE

Good News from Europe. The EU Parliament voted on 25 March to exclude aerodromes primarily used for sport and recreational flying from proposed pan-European regulation. After intensive interaction with the Commission, Parliament and the Council, Europe Air Sports is particularly pleased that the European decision-makers have listened to good arguments and have recognised that it would be disproportionate to regulate aerodromes mainly used for sports and recreational flying at the European level. You can read more detail at http://www.glidering.co.uk/bgainfo/documents/s9031_epvotes_aerodromes.doc

CONSUMER PROTECTION NEWSLETTER PLANNED BY KENYA CIVIL AVIATION AUTHORITY

The Aviation Consumer Protection Department (ACPD) of the Kenya Civil Aviation Authority (KCAA) is in the process of compiling articles for its inaugural Aviation Consumer News. The newsletter will be distributed electronically nationally, regionally and internationally. According to Cornel Oguya, Head of Consumer Protection at KCAA, it is the policy of ACPD to present factual and reliable information to aviation consumers and it is seeking informative articles about aviation issues of concern to stakeholders. Of course, there is no shortage of those and, if genuine, your complaints and discussions about issues will be published without fear or favour. Oguya goes on to say: "The articles are expected to contain pictures and other illustrations to help enhance and enrich the contents".

Many stakeholders are sceptical about the notion of "Consumer Protection" by KCAA, viewing it as tokenistic PR exercise, because so few complaints have been seriously addressed by KCAA in the past. It will take time for KCAA to rebuild its credibility with the aviators, and this effort may be a first step towards that goal.

APA COMPETES IN LOCAL INSURANCE MARKET - OFFERS LOW RATES ON "YELLOW CERTIFICATES"

APA Insurance Co. Ltd., one of the largest Kenyan insurers, has had a presence at Wilson Airport (Aero Club Compound) for a year now. The outlet caters for all types of insurance needs (motor vehicle, burglary, theft, medical, labour insurance, and also "Aviation"). Of great interest to all Kenyan aircraft operators, from microlights to jets, is the fact that APA offers the mandatory Third Party Liability insurance at over 20% less than its competitors. APA has obviously recognized that there have been very few third party claims in Kenyan aviation history. So, their offer represents quite a saving and should be of great interest especially to the light aircraft operators, particularly at C of A time. Service is virtually "instant" as certificates are issued "on -the-spot". They also issue competitive hull and passenger liability insurance. Contact: Joan Edwards:Tel. 0735 600 470, at the APA office, Aero Club Compound, Wilson Airport.

ORLY CLUB HOUSE 70% COMPLETE

Not long now and all Aero Club members will be able to enjoy the view on the valley at Orly Airpark, Kitengela. The long-awaited Club House is nearing completion. And the veranda and bar are receiving the final touches.

Orly Airpark recently expanded and now covers 235 acres. A number of projects are under way, including an airport lounge and toilet/shower facilities. The NEMA environmental audit in progress, an electric fence has been commissioned around the entire site and several private cottages and new hangars are under construction. It is planned that the main apron will be covered entirely with Bamburiblox by end - 2009 and that a staff housing block and a new borehole will be completed this year. KP&L connection is also on target.

Those who have not visited this new exciting airfield in the Kitengela (along the "Pipeline Road") should perhaps take a look. Take a picnic and watch the gyrocopters, microlights, skydivers and other enthusiasts perform.

Aero-News is published as a service to Members of the Aero Club of East Africa, to keep them informed about aviation in East Africa. Contributions are welcome. If you have some comments or suggestions, do not wish to receive this newsletter, or if you want to be added to the mailing list, please send a message to Harro V. Trempenau, Chairman, Aero Club of East Africa, harro@trumpetnose.com

Harro Trempenau
Chairman
Aero Club of East Africa