

Managing Records as Reliable Evidence for ICT/ e-Government and Freedom of Information

Kenya Court Case Study



International Records Management Trust

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Introduction

The purpose of the court case studies is to examine the manner in which the courts are handling records management in the electronic environment. In particular, the studies assess case management systems, where they are in use, to determine the extent to which international good practice in records management is being considered. This case study was undertaken at the Kenyan Court of Appeal.

The Court in the Judicial Structure

Ministry of Justice, National Cohesion and Constitutional Affairs

The Ministry of Justice, National Cohesion and Constitutional Affairs has responsibility for the co-ordination and facilitation of justice. The Ministry represents the Judiciary's policies in Parliament and Cabinet. The functions of the Ministry include legal policy, policy on administration of justice, Constitutional matters, anti-corruption strategies, legal education, political parties, law reform and legal aid.

The Judiciary

The Judiciary is one of the three arms of the Government established under chapter 10 of the Constitution of Kenya 2010. It is independent from other government functions and provides a forum for the just resolution of disputes in order to preserve the rule of law and to protect the rights and liberties guaranteed by the Constitution of Kenya.

The Judiciary is headed by the Chief Justice and divided into two units: the technical unit, comprised of the courts, and the administrative unit, which consists of departments for administration, personnel, accounts, procurement, planning, library services, ICT and the National Council for Law Reporting (NCLR).

The mandate of the Judiciary is the administration of justice and judicial matters as set out by the Presidential Circular No.1/2008, on the organisation of the Government. The functions of the Judiciary include:

- hearing and determination of criminal and civil disputes
- constitutional interpretation and protection of rights and liberties for all
- probate and administration
- formulation and implementation of judicial policies
- compilation and dissemination of legal information for effective administration of justice.

The Judiciary undertakes its functions through the Supreme Court, Court of Appeal, High Court, Magistrates' Courts, Kadhis' Courts, Judicial Service Commission and National Council for Law Reporting.

The Supreme Court

The Supreme Court was established by Article 163 of the Constitution of Kenya 2010, which was promulgated in August 2010. The Supreme Court is composed of the Chief Justice, who is the president of the court; the Deputy Chief Justice, who deputises for the Chief Justice and is the vice-president of the court; and five other judges. This court has exclusive original jurisdiction to hear and determine disputes relating to the elections of the President of Kenya. It also has appellate jurisdiction to hear and determine appeals from the Court of Appeal and any other court or tribunal as prescribed by national legislation that relates to interpretation or application of the constitution of Kenya or to matters of general public importance. At the time of this case study, this court was in the formative stages of being constituted.

The Court of Appeal

The Court of Appeal was established by an Act of Parliament in 1977 after the demise of the East African Community, under which the Court of Appeal for East Africa had operated as a department. The president of the Court of Appeal is elected from among the judges of the Court. The Court has jurisdiction and powers to hear and determine appeals from the High Court of Kenya and any other court or tribunal.

The High Court

The High Court has original jurisdiction in criminal and civil matters; jurisdiction to determine whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened; jurisdiction to hear appeals from tribunals appointed for removal of a person from office; and jurisdiction to hear any question respecting the interpretation of the Constitution. The High Court in Nairobi has a Family Division, Criminal Division, Civil Division, Commercial Division, Constitutional and Judicial Review Division. There are 15 High Court stations in the country.

Magistrates Court

Magistrates courts were created under the Magistrates Courts Act, (Chapter 10 of the Laws of Kenya) and reconstituted under Article 169 of the Constitution of Kenya 2010. They handle civil and criminal matters depending on the rank of the magistrate. The hierarchy of Magistrates in descending order is as follows: Chief Magistrate, Senior Principal Magistrate, Principal Magistrate, Senior Resident Magistrate, Resident Magistrate and District Magistrate. There are 105 magistrates courts in the country.

Kadhis' Courts

Kadhis' Courts deal with matters relating to personal status, marriage, divorce and inheritance in proceedings in which both parties profess the Muslim religion and submit to the jurisdiction of the Kadhis' courts. There are 15 such courts in the country.

Specialised Courts and Tribunals

In addition to the courts mentioned above, there are Children's Courts that deal with matters relating to children and Anti-Corruption Courts to deal with matters relating to corruption and integrity.

Tribunals may be established under various laws made by Parliament to deal with specific matters. They adhere to the same service standards as the ordinary courts and usually finish their cases in a shorter time. Litigants dissatisfied with a tribunal decision may appeal to another tribunal or to the minister in charge or to the High Court. There are over 60 tribunals in Kenya. The most common are:

- Industrial Court: labour disputes
- Land Disputes Tribunals: disputes relating to land issues such as the division of land and boundaries of land
- Rent Restriction Tribunal: disputes between landlords and tenants of residential houses
- Business Premises Tribunal: cases involving landlords and tenants of business premises such as shops and hotels.

ICT in the Judiciary

The Judicial Information Communication Technology Committee (JICT) oversees all ICT matters in the Judiciary. It was established on 15th October, 2008. Its membership is drawn from the Court of Appeal, High Court, Registrar of the High Court, finance office, ICT office, National Council for Law Reporting, e-Government and the Kenya ICT Board. The Judiciary Strategic Plan 2009 – 2012 guides its co-ordination of ICT projects and investments. The JICT Committee has initiated several activities such as the digitisation of court records and the creation of a case management system, development of the ICT policy and strategic plan, establishment of communication infrastructure, acquisition of hardware and software, and tele-presence court sessions.

Digitisation of Court Records

The digitisation of hardcopy records was the first step taken towards automating the Judiciary's processes. An ICT consultant was commissioned to carry out a needs assessment

with a view to determining the nature and volume of the court records to be digitised, developing a digitisation strategy, and preparing an implementation plan. With the assistance of the ICT Board and the Judiciary, the consultant organised the court records for the last ten years and a total of 325,000 files were prepared for digitisation. By October 2010, Digital Scape Company Ltd and DPH India (the firms awarded the contract to digitise the records) had scanned five million pages of the 30 million targeted pages of court records. The current status of this project is unknown.

ICT Policy and Strategic Plan

Deloitte Consulting Ltd was contracted through the assistance of DFID, the World Bank and the Ministry of Finance (FLSTAP) to assist the Judiciary in developing an ICT Policy and Strategic Plan. The Judiciary ICT Strategic Plan identified ICT initiatives necessary for the automation of the judiciary's processes and provided a road map for implementation. Both the Policy and the Plan were officially launched in October 2010.

Communication Infrastructure and Hardware

Plans are under way to improve communication and sharing information and resources through the use of ICT. Contracts have been awarded to establish Local Area Networks in High Court stations. At the time of the visit, a tender had been issued for the supply of ICT equipment out of which 350 UPS, 200 printers and 100 desktop computers had been purchased at the time of this study.

Tele-presence Court Sessions

The first tele-presence link has been established between the Court of Appeal in Nairobi and its sub-registry in Mombasa, with the assistance of the ICT Board. Video cameras and screens have also been installed in refurbished and soundproofed rooms in the Mombasa and Nairobi Law Courts. This facility enables parties in Mombasa to have their cases heard by a Court of Appeal Judge or Judges in Nairobi through tele-presence (ie a refined form of video conferencing). This is expected to reduce the cost of litigation and facilitate speedy access to justice as parties in Mombasa will not need to travel to Nairobi when the Court of Appeal is in session there.

The first cases were relayed in October, 2010 from Mombasa during the official launch of the ICT Policy and Strategic Plan. The Court of Appeal heard three cases via video conference where the bench sat in Nairobi while the respective lawyers were in Mombasa. It is envisaged that if the pilot tele-justice system in the Court of Appeal is successful, the system may be employed in criminal cases. The tele-system may then be installed in the Prisons and the Chief Magistrates Courts, so that, where appropriate, cases may be dealt with without remanded accused persons being brought to the court.

The implementation of this system in the criminal courts is subject to the appropriate legal infrastructure being put in place. Draft guidelines for the use of this system have been drawn up and presented to the Rules Committee for scrutiny. In the meantime, the draft guidelines are being adopted for use in the pilot in Civil Cases, with the consent of the parties involved in the applicable cases.

Future Projected Activities

The Judiciary ICT Policy and Strategic Plan has provided for full automation of court processes and administrative functions. To achieve this, the following activities are planned:

- purchase of laptops for all judicial officers
- establishment of Local Area Networks (LANs) in all court stations
- establishment of a Wide Area Network (WAN) and provision of internet services in all the courts to facilitate the deployment of automated solution to all courts
- digitisation of files in all court registries
- installation of a document management system to facilitate the storage and access of case files in all courts
- installation of an integrated case management system to facilitate tracking and managing cases in all courts
- installation of SMS system in all courts to enable litigants to access the status of their cases
- installation of Audio Visual Court recording system in all courtrooms for all court stations
- installation of tele-presence systems to support criminal court cases where necessary.

Records Management in the Judiciary

Responsibility for Records Management

The Judiciary is divided into two units: the technical unit, which comprises of the courts, and the administrative unit, which consists of various departments, namely, Administration, Auditing, Accounts, Personnel, Procurement, Planning, and Library Services, Information and Communication Technology and the National Council for Law Reporting.

Archivists and archives assistants are responsible for managing records, assisted by clerical officers. There is no central authority responsible for managing records and archives in the

Judiciary; each division develops its own rules and procedures, except with regard to the disposal of records, which is governed by the Records Disposal Act Cap. 14. The Act provides a schedule for records retention and disposal and procedures for disposal. However, it does not cater for the disposal of records from the Court of Appeal.

Court Registries

The court registries perform administrative and executive functions, including:

- documentation, storage and retrieval centre for files, exhibits and other documents in every court
- registration and processing of cases at every stage till they are finalized
- assessment and collection of court fees deposits and fines
- processing of typed proceedings
- dispatch and handling of correspondence
- processing of bonds and bail documents
- the preparation and execution of warrants and summons for signature by judicial officers ie magistrates/ deputy registrars and/ or judges in some cases
- preparation of cause lists
- preparation of appeal records
- linking courts and litigants
- execution of court orders and/ or decrees
- preparation of documents, eg summons, remand warrants, bonds
- keeping of court diaries and allocation of mention and hearing dates
- service of summons at the counter
- receiving and stamping documents
- verifying documents before they are accepted for filing of case
- issuance of court rulings/ judgments and orders (copies of the above)
- keeping of exhibits and verifying the same
- submission of judicial returns
- issuance of summons
- custody of court seals
- housing court registers
- informing litigants of changes in case allocation
- preparations of files in an orderly manner and sequence
- assisting litigants on information about cases and dates of cases
- receiving affidavit and other documents, ie memos, court fees
- maintaining records of files in the registry
- keeping safe custody of court files
- overseeing a typing pool for proceedings, letters, summons and other court matters.

Senior Management Support to Records Management

The archivists do not have sufficient status to influence records management policy. In the Para-Legal Staff (PLS) group of employees where they fall, the highest scale for records staff

is PLS 9 against other para-legal staff, who are placed at PLS 15. The senior members of staff are not provided with any awareness training on the importance of records. More often than not, the interest shown in the area of records management is based on personal initiative. This is because poor record keeping affects each magistrate's/ judge's work performance.

Staff Capacity

Although court records are not managed centrally, there is a career structure for the records cadre for the Judiciary (ie archivists and archives assistants who fall in the Para-Legal Staff class in the Judiciary). They are assisted by clerical officers, who are deployed to other duties from time to time.

The approved establishment in this cadre is 66 broken down as follows: archivist II (1); senior archives assistant/archivist III (29); and archives assistants (36). These rankings are low compared with other cadres, such as finance officers and human resources management officers, whose highest holder is PLS scale 15.

Out of the establishment of 66, only 40 are in post, against over 120 court stations in the country. The 40 records staff members are stationed in different courts in the country. They are trained in archives and records management, but out of their own personal initiative rather than at the initiative of the courts. Of the 40, three have trained at degree level; 25 at diploma level; and 12 at certificate level. A few of the diploma holders are pursuing degrees in Information Science in different higher learning institutions.

Records Management Integration with Case Management Systems

The Judiciary is automating judicial processes. A system is being designed to ensure that electronic records are available on the Wide Area Networks. There were no records managers or archivists on the committee that planned the automation process. The process is at an early stage and the focus is on preparing records for digitisation, which has been carried out in the 17 high court stations, and scanning. The design of the automated system has not yet been completed. As none of the members of the judiciary's records management staff are senior and no consultation with KNADS has been initiated, it is unlikely that full records management functionality is being developed in the system. The system is still in the planning stage and the project plans were not available to the research team. Therefore, no assessment or analysis of the system was possible.

Conclusion

There was no case management system in use at the Court of Appeal, so records management integration with ICT at this level could not be assessed. Nevertheless, some conclusions about the planning for records management in the electronic environment can be drawn from the structures in place for introducing ICT into the judiciary.

The composition of JICT includes representatives from e-Government and the Kenya ICT Board, but there is no representation for the records management function, either from the judiciary's records management cadre or from KNADS. This suggests that there is a focus on hardware and software, but not on the information being managed and the controls that will be needed to manage electronic records over time.

It is also of concern that digitisation of court records began before the design of the system for managing the digital surrogates. The digitisation is proceeding without the specifications needed to manage digital surrogates over time. At present there are five million digital surrogates of court records being managed in an office system that has not been tested for records management functionality. It is unclear what intellectual controls have been placed on these surrogates, such as naming and indexing rules, to ensure they can be retrieved over time. These surrogates are at risk of corruption or loss, and it is unclear whether the originals have been kept and are being preserved to ensure the ongoing functioning and accountability of the courts, in the event that there are problems with the digital records.