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POLICY, LEGAL AND REGULATORY FRAMEWORK FOR RECORDS MANAGEMENT IN THE KENYAN JUDICIARY

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Abstract

Records are valuable assets to the functioning of the state and need to be managed appropriately to enhance effectiveness, accountability and transparency. They are fundamental to the efficient and effective operation of the legal system of any country and are essential to the administration of law in the justice system. Records must therefore be managed within a sound records management regime that is capable of availing authentic, reliable, timely, authoritative and accurate information for decision making. Such a records management regime requires among other things appropriate policies, laws and regulations. This paper presents part of the findings of a study that was undertaken to investigate records management in the Kenyan Judiciary. The study used qualitative which allowed the triangulation of data collection methods for enhanced reliability and validity of the research findings. The data were collected through interviews, questionnaires and document reviews. The population of the study comprised records officers, registry assistants, court registrars, judges and magistrates. The findings of the study revealed that the Kenyan judiciary did not have records management policies but instead depended on laws such as the Kenya Public Archives and Documentation Service Act Cap 19 of 1965; the Records Disposal Act Cap 14 of the Laws of Kenya; and the Constitution of Kenya 2010 to guide its operations. The findings further revealed that although the Kenya Public Archives and Documentation Service Act empowered the director of the Kenya National Archives and Documentation Service to advise on the care, preservation, custody and control of any public records, such advice was limited. It is recommended that some aspects of the Records and Disposal Act should be amended to reflect the realities of current business operations in the Kenyan Judiciary. Moreover, the formulation of records management policies should be undertaken.

Keywords

Kenya, The judiciary, records management, judicial transformation framework, records management policies

Introduction

Records are valuable assets that need to be managed by any organization or nation. They are vital to virtually every aspect of the governance process because they fulfill important functions in society by providing evidence of and information about the transactions of individuals and organizations (Sichalwe 2010). Government records not only document past decisions but also establish and protect current rights and responsibilities of both the government and the governed (Mnjama and Wamukoya 2007). Records therefore, provide a source of public accountability of how governments and government agencies carry out their public duties and the mandates of the citizenry. Roper and Millar (1999) contends that records are particularly fundamental to the efficient and effective operation of the legal system of any country and are more critical to the administration of law than to any other function of the public sector.

Without records there can be no rule of law and no accountability. Records are therefore indispensable to the delivery of services by any government to its citizens.

Moloi and Mutula (2007) point out that sound management of records in whatever form has increasingly become a topical issue. The International Records Management Trust (IRMT) (2000) observes that records are essential for the effective and efficient service delivery in both private and public sector organizations. This is largely attributed to the fact that records document decisions and activities of government and organizations thus providing a benchmark upon which future activities and decisions are based. For these reasons, records are increasingly viewed as organizational strategic resources that need to be managed within a sound records management system (IRMT 2000).

According to Motsaatheba and Mnjama (2007) the importance of records in dispute settlement and adjudication is crucial for several reasons. Firstly, for a case to proceed, the initial documents (the summons) should be available. Failure to provide or locate these documents means that the case cannot proceed thus, occasioning delays in determining the case. Lack of evidence in the form of records can lead to failure of the judicial system to bring justice to the citizens. This may lead to loss of faith in the administration of justice. Motsaathebe and Mnjama (2007) also asserted that when an accused person appeals against conviction, the decision of the judge is made after assessing the record of proceedings from the lower court. This is achieved by having a complete and accurate record from the lower court. If the record of proceedings cannot be located for whatever reasons including poor record keeping practices, the accused person might be denied justice.

Furthermore, there is a tendency for some civil litigation to continue for many years or be revived after a long period of time. Good record keeping enables the concerned parties to enquire about the status of their case. The overall effect is that the court staff will be able to update the concerned parties, due to good record keeping. In a nutshell, the daily operations of the court depends on the availability of accurate, authentic and reliable information, presented in a timely manner, hence the need to maintain an effective and efficient records management system for the judicial system. If a case file relating to a trial cannot be located it becomes impossible for a judge or magistrate to pass judgment, thus justice being denied or delayed to the plaintiff.

The effectiveness and efficiency of the records management system depends on several factors key among them being the policy, legal and regulatory framework for the management of records. According to Luthy and Forcht (2006), a growing number of laws and regulations on one hand have implications for records management and related control systems. On the other hand policies provide the roadmap upon which the management of organizational records is based.

The World Bank (2000) recommends that each organization/agency should establish records management policies in order to:

- Organize systems for the effective and efficient delivery of information and records management services;
- Ensure appropriate linkages between the creation and management of information and execution of the agency's functions;
- Enable the establishment of information management standards;
- Facilitate the identification of those information systems and information technologies including computers and communication systems; and

- Establish systems to ensure the security and physical protection of information and records.

The organizational policies therefore provide specific policy information that guides the direction the organization / agency takes with regards to records management. In addition to policies, comprehensive and up to-date legislation is essential to ensure complete protection for records. The World Bank (2000) observed that there is need for comprehensive legislation if records are to be managed well. Such legislation facilitates the establishment of records and archives institutions as public institutions responsible not only for records generated in the government service but also for any other parastatal or public records of national or regional importance. The legislation also regulates access to and protection of records.

Records management policies, laws and regulations therefore play a critical role in enhancing the management of records in the Kenyan Judiciary for enhanced justice delivery. It is therefore imperative that policies, laws and regulations and their impact on the management of records in the Kenyan Judiciary is understood. This paper investigated key policy, legal and regulatory framework for records management in the Kenyan Judiciary.

Statement of the problem

“Records are indispensable for efficient, transparent and accountable management of organizations but are often under-valued, ignored or misunderstood” (Williams 2006:-1). However, in the Kenyan judiciary it would seem records are not properly managed. The Chief Justice of Kenya decried the weak records management regime in the Kenyan judiciary which he opined affects negatively the delivery of justice (Mutunga 2012). Mutunga (2012:3-4) observed that “case delays had become the badge of inefficiency and ineffectiveness the judiciary wore as its mark of distinction and an important source of public frustration”. As pointed out earlier, records are particularly fundamental to the efficient and effective operation of the legal system of any country (Roper and Millar 1999). In the same vein, Thurston (2005) pointed out that well managed records are essential to efficient and effective legal systems since the potential for injustices that may result from delays, corruption, inaccuracies as well as misfiling are substantially reduced. Such a system would require that the right records management policies, legal and regulatory framework be put in place among other requirements.

In view of this, the study investigated the policy, legal and regulatory framework for records management in the Kenyan judiciary. The study was guided by the following research questions:

- What records management policies, plans and guidelines are available in the Kenyan judiciary?
- What legislations and regulations governing the management of records have been put in place in the judiciary?
- How does the current policy, legal and regulatory framework affect the management of records in the Kenyan judiciary:

Research methodology

This study adopted a qualitative approach where a case study design was used to obtain in-depth data required to address the research problem. Multi-methods was then used to collect data where, in-depth interviews, document review and questionnaires techniques were used. In-depth interviews were used to collect qualitative data from court registrars, deputy registrars, executive officers, records officers and registry assistants. Document review was also used to collect

qualitative data from the Kenyan Constitution 2010 and relevant legislations governing records management in the Kenyan judiciary. Lastly the questionnaires were used to collect both qualitative and quantitative data from judges and magistrates. Prior to data collection, interview schedules and questionnaires were prepared, pretested and appointments for interviews secured. On the appointed dates, the interviews were done and in cases where the officers were not available, rebooking was done. Likewise questionnaires were administered and the researcher collected filled questionnaires on dates agreed. Some cases required many follow-ups while others were not filled even after the many follow-ups as explained elsewhere. The interviews took maximum time duration of 20 minutes while the questionnaires took a maximum of 15 minutes. The multi-methods technique was found to be a useful tool to validate the research findings (Ngulube 2015; Ngulube and Ngulube 2015). Qualitative data was then analysed thematically basing on the research questions while the quantitative aspects of the data were analysed using statistical software (SPSS version 16).

The study population comprised of four court registrars, Eight deputy registrars, 82 judges and magistrates of the high court and magistrates courts respectively, 12 executive officers, 13 records officers (archivists) and 24 registry assistants (executive assistants and clerical officers) in both the high court and the magistrates’ courts in Nairobi and Uasin Gishu counties. A complete enumeration of the study population (census) was undertaken involving all members of the population as shown in Table 1.

Table 1: Population of the study

Category of Staff	Population(Nairobi County)	Population (Uasin Gishu County)
Court Registrars	4	*
Deputy Registrars	7	1
Judicial Staff (Judges and Magistrates)	71	11
Executive Officers	11	1
Records Officers (Archivists)	12	1
Registry Staff	20	4

(Source: Kenya Law Reports Website, 2013) * All court registrars are based in Nairobi

Validity of the research tools was ensured by pre-testing the instruments through peer debriefing and triangulating of data collection methods. Reliability of the questionnaire was tested using Cronbach Alpha and was found to be reliable at 0.7 (Nyagowa 2012). Before the commencement of data collection, research clearance was sought from the University of KwaZulu-Natal. This clearance follows securing permission from gate-keepers in institutions to be studied. In the case of this study, a research permit was sought from the relevant government ministry in Kenya and further permission to conduct the research obtained from the chief registrar.

Discussion of findings

The findings are presented based on themes obtained from the research questions of the study as follows: existing records management policies, plans and guidelines; and legal and regulatory framework for records management. The interview response rate is given in Table 2. Additionally, out of 82 questionnaires that were administered to judicial officers comprising judges and magistrates only 43 were completed and returned representing a 52 % response rate. This seemingly low rate of response was due to the busy schedules of the judicial officers. This rate of response is however acceptable basing on extant literature (Babbie and Mouton 2001).

Furthermore, possible gaps were sealed by in-depth interviews with the deputy registrars (magistrates by designation) that yielded very useful information.

Table 2: Interview response rate

Target Group	Target Number	Interviewed	Percentage
Court Registrars	4	2	50%
Deputy Registrars	8	8	100%
Executive Officers	12	11	99%
Records Officers	13	9	69%
Registry Assistants	24	16	67%
Average response rate	61	46	75%

Source: Field Data (2014)

Existing records management policies, plans and guidelines

A records management policy is a cornerstone for effective management of records in an institution as it provides statements of intention that underpin a records management programme. The study sought to establish the existence of records management policies, plans and guidelines in the Kenyan judiciary. Interviews and document review were used to provide useful insights.

The two registrars interviewed and all the eight deputy registrars noted regretfully that there was no records management policy in place in the Kenyan judiciary. However, of the 11 executive officers interviewed, two (18%) reported that the judiciary had a records management policy while the remaining nine (82%) thought that the judiciary did not have a records management policy. On the other hand, all the nine (100%) records officers indicated that there was no policy in place while 10 (63%) of the registry assistance also agreed that there was no policy and the remaining six (37%) were of a contrary opinion. The variation in the responses seemed to reflect on the knowledge the different respondents had on records management policies.

Those respondents that indicated that the judiciary had a records management policy were probed further and asked to identify the type of policy in place. They all explained that since each staff handling court records at whatever point knew what is expected of him / her means that there was a policy in place though this was not documented. These results suggest that the staff were not sure whether records management policies existed in the institution or not.

Asked whether there were any plans and /or guidelines for records management in place, the respondents gave mixed responses. The registrars, deputy registrars and a senior records officer indicated that a high court registry operations manual had just been launched and that they had been tasked with the responsibility of drafting the manual. This group (registrars, deputy registrars and a senior records officer) explained that their next phase was to sensitize the staff on the availability and use of the manual. They were also to formulate a records management policy as a matter of urgency since they rightly felt that the manual should be anchored on a policy platform. However, the rest of the respondents had not been sensitized on the availability of the manual. They therefore responded that there was nothing in the form of instructions, guidelines or regulations for records management in the Kenyan judiciary.

To corroborate the findings on the availability of records management policies in the Kenyan judiciary, the judges and magistrates were asked to rate the current records management in the judiciary on the scale of: very good; good; fair; poor and very poor. Their responses are indicated in Figure 1:

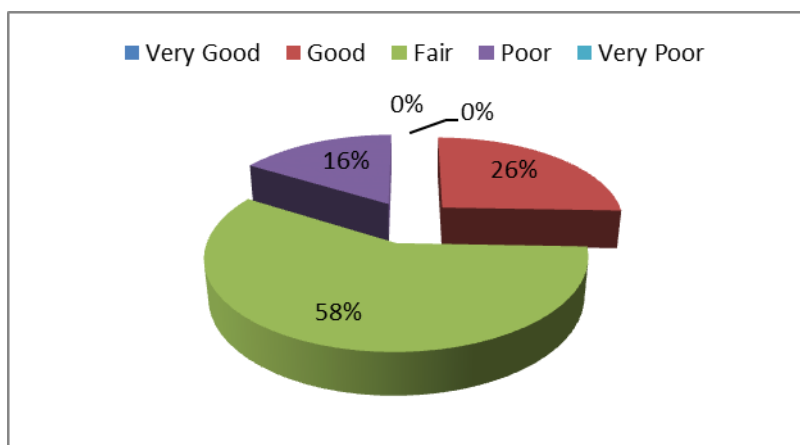


Figure 1: Records management rating by the judges and magistrates
Source: Field Data (2014)

Figure 1 shows that 25 (58%) of the judges and magistrates thought that records management in the judiciary was fair, 11 (26%) thought it was good, 7(16%) thought it was poor and no respondent indicated either very good or very poor.

The judges and magistrates were also asked to indicate factors they thought contributed to the then state of records management and they gave multiple responses as shown in Figure 2.

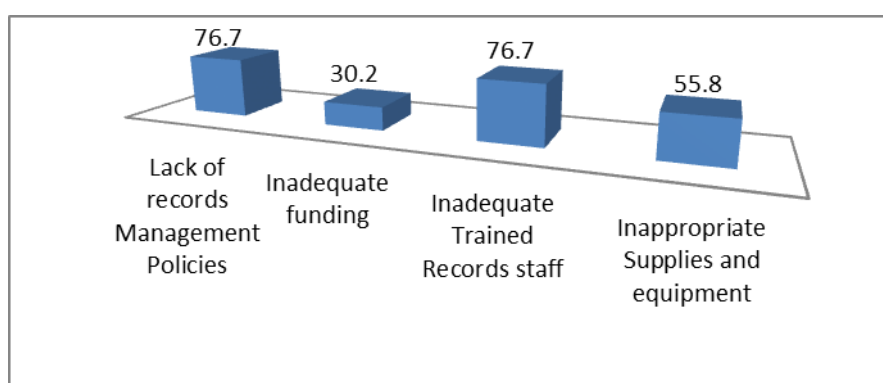


Figure 2: Reasons for the state of records management in the Kenyan judiciary
Source: Field Data (2014)

Figure 2 shows lack of records management policies and inadequately trained records staff as topping the list of explanations for the state of records management in the judiciary with 33 (76.7%) respondents, followed closely by inappropriate supplies and equipment with 24 (55.8%) respondent, and lastly inadequate funding with 13 (30.2%) of respondents.

When asked about instances of missing files in the Kenyan judiciary, the judges and magistrates indicated that missing files were reported in almost all the courts. Their responses are given in Figure 3:

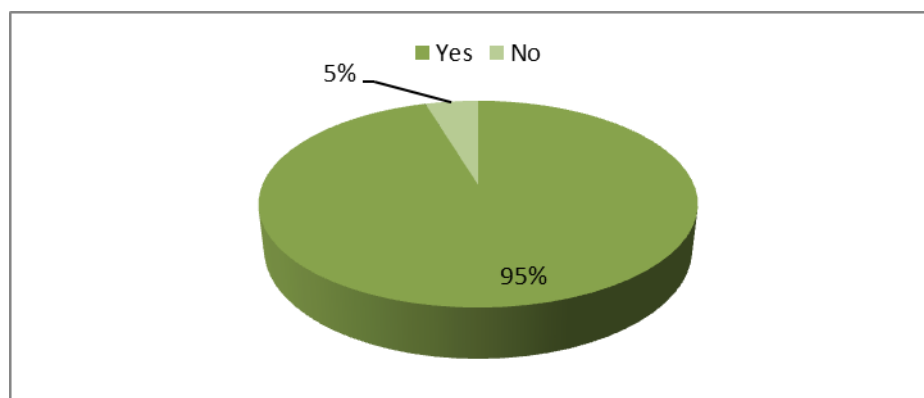


Figure 3: Missing files experiences (N=43)

Source: Field Data (2014)

Figure 3 shows that 41 (95%) of respondents experienced missing files in their court stations while only 2 (5%) of respondents did not experience any instances of missing files.

A question was posed on what factors contributed to missing files in the Kenyan judiciary and the responses of the judges and magistrates is reflected in Figure 4.

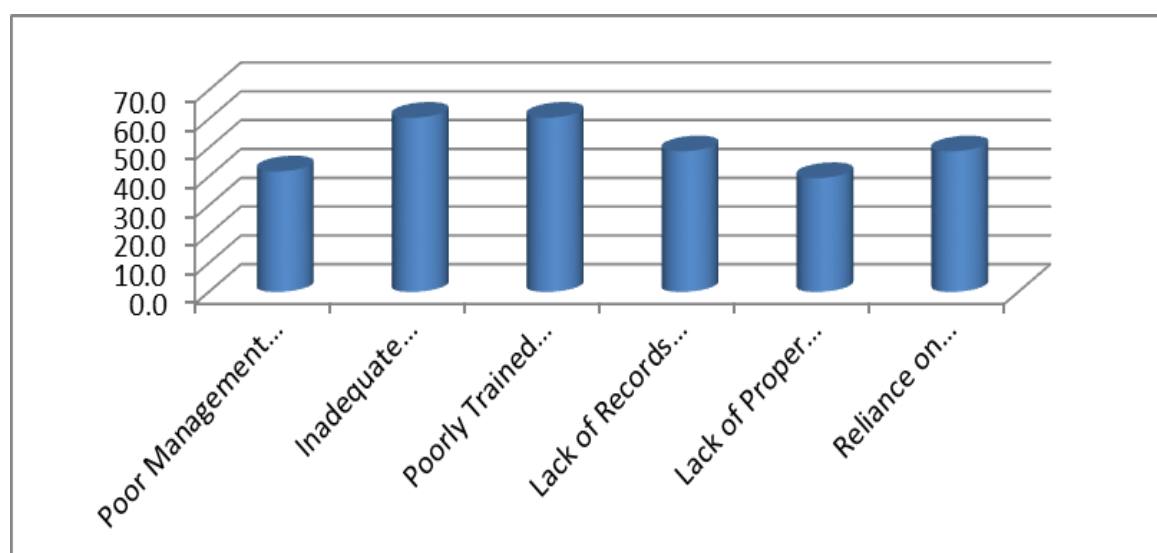


Figure 4: Factors contributing to missing files

Source: Field Data (2014)

Figure 4 shows 26 (60.5%) respondents cited inadequate records management staff, another 26 (60.5%) cited poorly trained records management staff, 21 (48.8%) cited lack of policies and guidelines, another 21 (48.8%) cited reliance on manual records management strategies, 18 (41.9%) indicated poor management of records and 17 (39.5%) suggested lack of proper storage equipment.

From the foregoing, the lack of records management policies seemed to negatively affect the state of records management. The findings further revealed that the lack of records management policies contributed to case backlogs and missing files which could delay the administration of justice thus affecting the performance of the judiciary. To corroborate these findings, the eight deputy registrars and 13 records officers were asked to state the effects of the lack of records management policies to the general administration of the courts. All the respondents 100% observed that the lack of records management policies contributed in a way to case backlogs and

missing files which eventually affects speedy administration of justice. This they explained is attributed to poor registry management resulting from the lack of records management policies. Perhaps their responses could be summarized by that of one registrar (R2) who had this to say:

...case backlog is a global issue; there are many reasons for these backlogs ranging from inadequate human resource to infrastructure development. However, records management also contributes to these backlogs since being a back office it should support the front office in order to ensure smooth service delivery. In instances where records management face a lot of challenges ranging from space, lack of policies to inadequate trained personnel its support to the front office suffers and such issues as backlog and missing files may arise.

Judiciary Strategic Management Plan

For more insights into the policies, plans and guidelines, the two registrars and eight deputy registrars interviewed were asked to state whether records management function formed part of the judiciary strategic management plan. This was because they were perceived to be well informed on overall policy matters in the judiciary given their positions. The two registrars and six deputy registrars indicated that records management being a key functional area in the judiciary formed part of the strategic management plan. Two deputy registrars were however not sure whether records management featured in the strategic plan.

The registrars and deputy registrars that responded positively were asked to indicate plans for records management in the next five years. They all indicated that it is envisaged in the plan that records should be fully digitized by the end of five years beginning 2012. In addition, court rooms should also be digitized by installing stenographers and recorders so that records could be captured in soft copies straight from the court rooms.

From the foregoing presentation, it can be deduced that the Kenyan judiciary did not have a records management policy at the time of the study. The absence of the policy could impact negatively on delivery of justice in the Kenyan judiciary since the delivery of justice is predicated on sound records management as observed earlier. The findings revealed that lack of records management policies contributed to missing files and case backlogs which could delay the effective administration of justice.

According to Mnjama and Wamukoya (2007), the level of organizational commitment to managing records can be gauged by the existence or non-existence of records management policies, plans and guidelines. This view is supported by ISO 15489-1 which recommends that organizations seeking to manage their records effectively should first and foremost establish, document, maintain and promulgate policies, procedures and practices for records management (ISO, 2001). As Roper and Millar would note policy and legislative framework are necessary to create a conducive environment for effective management of records (Roper and Millar 1999). Meanwhile, according to ISO (2001), a key objective of records management policy is the creation and management of authentic, reliable and useable records capable of supporting business functions and activities for as long as they are required. If the Kenyan judiciary is to manage its records effectively and enhance its justice delivery, a records management policy is therefore a necessity.

Legal and regulatory framework for records management in the Kenyan Judiciary

The research sought to know the laws which guided the management of records in the Kenyan judiciary. The two registrars, three deputy registrars and five executive officers who were interviewed identified Public Archives and Documentation Service Act Cap 19 and Records Disposal Act Cap 14 as the main legislations governing the management of records in the

Kenyan judiciary. The remaining five deputy registrars and six executive officers identified only the Records Disposal Act. Similarly, all the nine records officers and 10 registry assistants identified both laws. The remaining six registry assistants identified only the Records Disposal Act. Further deliberations with the registrars and deputy registrars revealed that the Kenyan Constitution 2010 being the supreme law in the country provided general directions on records management in the Kenyan public sector in general.

From the above it was evident that the Kenyan Constitution 2010, the Public Archives and Documentation Services Act Cap 19 and the Records Disposal Act Cap 14 form the legislative framework for records management in the Kenyan judiciary. However, from the above responses, majority of the respondents were aware of the records disposal Act suggesting that it is the most applied piece of legislation. Interviews with records officers revealed that they followed the provisions of the Records Disposal Act to the later when records are being disposed of in all the court stations. To corroborate the above findings, more information was sought on the above pieces of legislations by reviewing them and the overall findings are presented in the sections that follow.

The Kenyan Constitution 2010

The Kenyan Constitution 2010 was promulgated on 27 August 2010 after a long struggle for constitutional reforms (Maingi, 2010). Article 161 of the constitution establishes the system of courts in the Kenyan judiciary with the supreme court at the apex and subordinate courts at the lower levels (National Council for Law Reporting, 2010: Article 161). The Constitution 2010 contains a progressive bill of rights that is expected to address issues that are of great public debate in Kenya such as governance, equity and equality, security, and justice (Cowell 2010).

Review of the Constitution showed that article 35 of the bill of rights accords every citizen the right to access information held by the state. This information includes but is not limited to information held by the judiciary. However, save for the registrars, deputy registrars and a senior records officer, all the other respondents were unaware of the provisions of article 35 of the Kenyan Constitution and its implications to records management in government agencies like the judiciary. One of the registry clerks had this to say: “*I do not know what the article says and I’m not even sure if the Kenyan Constitution has anything to do with how we manage records in our courts*”. This indicated that a majority of staff in court registries in the Kenyan judiciary were oblivious to provisions of the constitution and therefore had not put into consideration its provisions as they managed the records.

Information on the judiciary especially that pertains to the adjudication of cases is to be found in court records since as Thurston (2012) observed; records are the most reliable sources of government information. Therefore all public records must be properly managed to facilitate the right to access information held by the state and all government agencies. IRMT (2000) opined that if governments are to be held accountable for their actions and if the public is to have legally enforceable rights of access to government information, then it is essential to ensure that evidence is accurately and securely preserved. This calls for sound records management in all public offices.

Public Archives and Documentation Service Act Cap 19 of 1965

This is an Act of Parliament that established the Kenyan National Archives and Documentation Service and provided for the preservation of public archives and public records and for connected purposes. Section four of the Act mandates the director of public archives and documentation service or any officer of the service authorized by him to among other things

examine any public records and advise on the care, preservation, custody and control thereof (Kenya Law Reporting 2010).

The nine records officers and 16 registry assistants were asked to explain how the Act was applied in the management of records in the judiciary. They explained that the Public Archives and Documentation Service Act provided for a working relationship between the judiciary and the Kenya National Archives and Documentation Service (KNADS) since the director of KNADS is mandated by the Act to give advice on records management to all public agencies. When asked whether the judiciary sought the advice from KNADS, the respondents intimated that this was done on very rare occasions. One of the respondents had this to say:

Initially we used to have a good working relationship with the KNADS and the director through senior officers in the service used to advise us especially on matters pertaining to disposal of the records. Then, the judiciary records that were deemed to have permanent value were transferred to the service for safe keeping after deliberations with KNADS. However, at present the KNADS is grappling with space problem and our permanent records are no longer transferred to the service. Consequently, the working relationship between the judiciary and KNADS has drastically diminished.

The above finding suggests that in as far as the judiciary was concerned, contrary to the provisions of the Act; the KNADS was not playing its role of advising government agencies on matters records management. This confirmed the findings of a study undertaken by Kemoni and Ngulube (2007). The study concluded that KNADS had not sufficiently carried out its mandate of advising public agencies to manage their records effectively as per the provisions of the Public Archives and Documentation Services Act Cap 19. The observed scenario is not peculiar to Kenya alone. A study by Keorapete and Keakopa (2012) observed that although the Botswana National Archives and records service is mandated by law to provide guidelines to government bodies with regard to records management, it had not sufficiently done so.

Secondly on reviewing the Act, the mandate given to the director appeared to the researcher to be too general and does not provide specific and measurable terms of reference. Further, discussions with the respondents revealed that the Act does not make mention of electronic records. This seems to suggest that the management of electronic records is not covered by the Act. The overall finding thus seems to suggest that this piece of legislation though it is the main legislation governing the management of records in Kenya, it still has its weaknesses.

Records Disposal Act Cap 14 of the Laws of Kenya (1962)

This is also an Act of Parliament that provides for the disposal of records in the custody of the high court and other subordinate courts. Section two of the Act empowers the chief justice to make rules for the disposal by destruction or otherwise of such records as books and papers in custody of the Kenyan courts that he may consider to be of no further use or unworthy of being permanently preserved. The rules should be made in consultation with the chief archivist and subject to the provisions of the public archives and documentation service Act (Cap 19).

From the interviews with the records officers and registry assistants, all (100%) agreed that records disposal was based on provisions of the Act. A senior records officer pointed out that “*the provisions of Records Disposal Act Cap 14 is strictly adhered to in the Kenyan Judiciary while disposing all court records*”. For clarity, the Act and its provisions were reviewed and summarized in Table 3.

Table 3: Criteria for records disposal

No	Description of Records	Period after which the records may be destroyed
1	All records rendered illegible or useless by climate, insects, fire or water.	At once
2	Records in civil proceedings, other than those relating to: - title to immovable property - Succession causes/inheritance/ right of heirship - Constitutional and Human Rights issues - Rights to water, air, way, light or other easement - Custom of a tribe, community or locality.	12 years from date of judgment or final order.
3	Records in criminal proceedings where acquittal or discharge has been ordered or fines only imposed, orders for security made or sentences of imprisonment not exceeding one (1) year passed and where accused has been committed for trial and complaints dismissed by a magistrate.	3 Years from date of judgment or final order.
4	- Police reports of death and Inquest records. - Miscellaneous police reports. - Reports of railway accidents	3 Years from date of preparation.
5	Judicial returns from magistrates Courts	3 Years from date of preparation.
6	Books of accounts lodged in bankruptcy proceedings where a discharge was granted	3 Years from date of discharge.
7	Miscellaneous correspondence regarding dates of trial, service of summons, execution of warrants, transfer of proceedings, attendance of witnesses and related correspondence.	3 Years from date of correspondence.
8	Books of account and miscellaneous documents, other than records relating to estates of deceased persons which have been distributed and accounts audited.	3 Years from date of audit.
9	Books of account lodged in connection with bankruptcy proceedings.	12 Years from date of adjudication.

(Source: Records Disposal Act, (Cap 14) Laws of Kenya)

During the interview with records officers and registry assistants, it emerged that the Kenyan judiciary strictly predicated their records appraisal and disposal on the requirements of the Records Disposal Act Cap 14. The Kenyan judiciary therefore had clear criteria for records disposal as laid down by the Act. The availability of such an Act potentially contributes to effective records management. As Iwhiwhu (2005) observed, records appraisal and disposition are fundamental to efficient and effective records management as they help an organization to control the growth of records and reduce financial losses that may arise from missing files.

However, a closer look on the provisions of the Act revealed that some of them required some amendments. An example of such provision is the requirement that records in criminal proceedings can only be destroyed if imprisonment of the accused person does not exceed one year. The implication for this is that any record pertaining to an accused person charged with a jail term of more than one year should be kept permanently. Discussions with the respondents revealed that currently there were many petty offenders whose jail terms exceeded one year and therefore their files were to be kept permanently thus clogging up storage spaces unnecessarily. It was felt that this Act should be amended to increase the minimum period of jail sentence to say five years beyond which the records could be kept permanently.

Conclusions

The study findings revealed that the Kenyan judiciary did not have a records management policy in place. However, the findings showed that a registry manual had just been launched although sensitization of staff on its availability and use was yet to be done. It emerged that the lack of

records management policy contributed to case backlogs and missing files in the Kenyan judiciary. The lack of records management policy therefore seemingly undermined the judiciary's quest to create and manage authentic, reliable and useable records capable of enhancing speedy delivery of justice.

Similarly, the study findings revealed that although the Kenyan Constitution 2010 recognizes the need for sound records management as a tool towards achieving the right to access information held by government offices, the means towards this seems to be lacking. The available legislations on records management appear weak. The Public Archives and Documentation Service Act Cap 19 is not applied to the later while the Records Disposal Act Cap 14 though seemingly strictly adhered to, some of its provisions required amendments as explained earlier. In conclusion therefore, the policy, legislative and regulatory framework for records management in the Kenyan judiciary seemed weak.

Recommendations

In view of the above, the study suggests the following recommendations:

- That the judiciary considers putting in place a general records management policy which should include the management of e-records. The policy would give guidance and effect to records management and address issues such as records access, records security and records preservation. Alternatively, the judiciary would consider developing individual policies on such areas as access, disposal and preservation which together with the overall records management policy would stream line records management in the judiciary. ISO (2001) notes that with a records management policy, institutions such as the judiciary will be able to create and manage authentic, reliable and usable records capable of facilitating speedy delivery of justice. By formulating the policy therefore, the judiciary will demonstrate its commitment to records management (Mnjama and Wamukoya, 2007). Tsabedze, Mutula and Jacobs (2012) recommended the enactment of records management policies which would facilitate development of capacity building plans and putting in place records management programmes.
- That the judiciary should consider rebuilding its working relationship with the KNADS by continually seeking the much needed advice on matters records management. The formulation of a records management policy for instance should be done in consultation with the chief archivist or staff from KNADS as may be appointed by the chief archivist. This will give effect to the provisions of the Public Archives and Documentation Service Act Cap 19. Secondly, the Act should be reviewed so that the director is given the power to ensure that public institutions adhere to sound records management. The review will also provide an avenue to ensure that the Act touches on the management of electronic records as well. This recommendation seem to agree with a recommendation given by Kemoni and Ngulube (2007) that Cap 19 be reviewed to give the director of KNADS the power to ensure compliance with standards that apply to the management of public records.
- Finally, the study recommends an amendment of some sections of the Records Disposal Act Cap 14 of the Laws of Kenya upon which appraisal and disposition in the Kenyan judiciary is based. The proposed amendment is with respect to the clause that requires records of persons charged in criminal cases whose jail sentence exceeds one year to be retained permanently is particularly important. The study therefore proposes that the judiciary's top management through the Kenya Association of Lawyers (KAL) could propose to the relevant committee in the Legislative Assembly of Kenya to extend this period to five years. This is informed by the observation that in the current practice most

criminal cases including petty crimes attracts jail terms of between three to five years forcing the records staff to retain almost all the files under criminal cases.

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