THE ROLE OF RECORDS MANAGEMENT IN SUPPORTING THE ADMINISTRATION OF JUSTICE AT MILIMANI COMMERCIAL COURTS, NAIROBI KENYA

BY

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DECLARATION

DECLARATION BY THE CANDIDATE:

I declare that this is my original work and has never been presented in any other university or college for examination/academic purposes.

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DEDICATION

It's my pleasure to dedicate this project to my mother, my brothers and sisters for being there for me at the time of need. I also want to dedicate this work to my supervisors Prof. Cephas Odini and Mr. Duncan Amoth who gave me both moral support and a reason to soldier on. Indeed this was an honourable sacrifice. Thank you for making me who I am today.

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I wish to express my sincere gratitude to the following towards the success of this research project: my project supervisors Prof. Cephas Odini and Mr. Duncan Amoth who have been of great help throughout this thesis writing.

Immense appreciation goes to my dear mum and siblings who have really done all within their means to ensure that my higher education and thesis are complete and successful.

Lastly, I would like to thank my friends and relatives for whatever they contributed towards the successful completion of this work: your friendship is something that I will always treasure. My achievements are all yours!

Thank you Lord for all my blessings!

ABSTRACT

Records are fundamental to the administration of justice and the protection of citizens' right in courts. Efficient and accountable court systems are widely recognized as a key component in the delivery of justice to citizens. In Kenyan courts, delays in administration of justice can usually be attributed to poor records management which leads to poor delivery of services to clients. The aim of the study was to investigate the role of records management in supporting the administration of justice at Milimani Commercial Court. The specific objectives of the study were to: examine the policy framework that governs records management practices at Milimani Commercial Court; determine the effectiveness of security measures put in place to safeguard the records; establish the adequacy of records management practices in supporting administration of justice and service delivery at Milimani Commercial Court; establish if the staff possess the right knowledge and skills in records management for quality service delivery; identify the challenges encountered in the management of records that impact negatively on service delivery and propose measures for improvement. The study was informed by Frank Upward's -Records Continuum Model. Data were collected from 127 respondents who comprised judicial officers, court officers, advocates and members of the public. Interview schedule was used to collect data. Qualitative technique was largely used to analyse the data. Quantitative technique was also used to quantify the research problem by generating numerical data that were transformed into useable statistics. The study found that the role of records management in supporting administration of justice was undermined by lack of a records management policy to govern the management of court records, ineffective security measures to safeguard the records, inadequate and poor records management practices that undermine the administration of justice and service delivery, lack of the right knowledge and skills for service delivery among staff members. The study concludes that records management at Milimani Commercial Court has not been effective in supporting the administration of justice. The study recommends a need for a records management policy framework to govern records management activities, good records management practices that will enhance administration of justice and expedite service delivery, a security policy be put in place and having backups, staff training and development and a disaster management program for records management.

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CHAPTER ONE

INTRODUCTION AND BACKGROUND INFORMATION

1.1 Introduction

This chapter presents background information of the study and the institution where the study was based. It gives an overview of records management and administration of justice at Milimani Commercial courts. The chapter gives the statement of the problem that necessitated the need for the research, aim and objectives, research questions, scope and limitations of the study.

1.2 Records and Records Management

The International Standards on Records Management ISO 15489-1 (2001) defines a record as information created, received and maintained as evidence and information by an organization or individual in pursuance of legal or in the transaction of business. According to Shepherd (2006), a record is recorded evidence of an activity that is an action undertaken by an individual or group in the course of their business.

Records are fundamental to the administration of justice and the protection of citizens' rights. Not only are current records in daily use for legal reasons, but records of previous actions are also routinely retrieved and used by a range of legal agencies. Efficient and accountable court systems are widely recognized as a key component in the delivery of justice to citizens. Delays in registering cases, locating records and filing documentation all have a direct impact on citizens and their legal rights. Thurston (2005) argues that: Dysfunctional records management undermines legal and judicial reform. Decisions are

made without full information about cases, and the absence of systematic recordkeeping and controls leaves scope for corruption or collusion between court officials and lawyers. Court time is wasted, delays are created, and the judiciary's standing is lowered. The large volume of records passing through a typical court system, their sensitivity, and time pressures on courts makes effective records management essential.

Proper management of court records allows magistrates, judges and attorneys, to research old cases that may have an impact on the outcome of current cases. It allows court staff to properly handle and manage the "paperwork" of cases that are currently on the docket awaiting adjudication and also allows citizens to document the history of their families or communities.

1.2.1 Justice

Dictionary.reference.com defines justice as "the quality of being just; righteousness, equitableness, or moral rightness: to uphold the justice of a cause."

1.2.2 Administration of Justice

According to www.duhaime.org/legaldictionary administration of justice is "the personnel, activity and structure of the justice system - courts and police - in the detection, investigation, apprehension, interviewing and trial of persons suspected of crime". The administration of justice is not confined to the courts only; it encompasses officers of the law and others whose duties are necessary to ensure that the courts function effectively. The concern of the administration of justice is the fair, just and impartial upholding of rights, and punishment of wrongs, according to the rule of law.

A good administrative system should be able to make the users and their needs central, treating them with fairness and respect at all times. Proper administration of justice enables people to challenge decisions and seek redress using procedures that are independent, open and appropriate for the matter involved. The citizens are kept fully informed and empowered to resolve their problems as quickly and comprehensively as possible.

The judiciary must ensure that justice is delivered expeditiously and without undue regard to technicalities. It must take effective steps to reduce the obstacles that hinder public access to information, ensure proximity and physical access to courts. The Judiciary Transformation Framework 2012-2016 states that "in guaranteeing equal protection of the law, the Constitution demands that the Judiciary must not only remove barriers to access to justice, it also obligates it to take effective steps to ensure that the Judiciary remains open and available to all who seek its assistance. Taking these measures will simultaneously serve the objective of enhancing the expeditious delivery of justice and reducing the citizenry's alienation from the justice system.

1.2.3 Benefits of Good Records Management

According to ISO 15489-1:2001, records contain information that is a valuable resource and an important business asset. A systematic approach to the management of records is essential for organizations and society to protect and preserve records as evidence of actions. A records management system results in a source of information about business activities that can support subsequent activities and business decisions, as well as

ensuring accountability to present and future stakeholders. Records enable organizations to:

- ❖ Conduct business in an orderly, efficient and accountable manner,

- ❖ Deliver services in a consistent and equitable manner,

- ❖ Support and document policy formation and managerial decision making,

- ❖ Provide consistency, continuity and productivity in management and administration,

- ❖ Facilitate the effective performance of activities throughout an organization,

- ❖ Provide continuity in the event of a disaster,

- ❖ Meet legislative and regulatory requirements including archival, audit and oversight activities,

- ❖ Provide protection and support in litigation including the management of risks associated with the existence of, or lack of, evidence of organizational activity,

- ❖ Protect the interests of the organization and the rights of employees, clients and present and future stakeholders,

- ❖ Support and document current and future research and development activities, developments and achievements, as well as historical research,

❖ Provide evidence of business, personal and cultural activity,

❖ Establish business, personal and cultural identity, and

❖ Maintain corporate, personal or collective memory.

With reference to public sector, the benefits of records management, as listed by Blake (2005), include: supporting efficient joint working and information exchange, facilitating evidence-based policy making and supporting administration of data protection principles and effective implementation of freedom of information and other policy legislation through good organization of records.

Records management enhances public service delivery, the rule of law and accountability. Well established records management systems in public sector organizations will influence public servants to be accountable, transparent, and with high integrity to their decisions and actions. Improved quality and availability of information provides the foundation requirements of improving service delivery and accountability, which is the prime objective of public service reform (Manyambula, 2007). As stated by Mbakile (2007) records management supports knowledge management across sectors of governments by making reliable information available for sharing, extraction and summarization.

Poor records management, as stated by Wamukoya (2007), leads to poor decision making, lack of transparency and accountability, theft, corruption and plunder of resources, mistrust amongst stakeholders and citizens, poor productivity and failure to

meet obligations and mandates, vulnerability to lawsuits. Therefore records are the lifeblood of any business and during a time of crisis, being able to get the right information at the right time can make an organization recover and hopefully flourish following an expected event. If the right information was being held in a location that is not safe and backup systems are not put in place, business information and vital records may never be recovered.

Therefore records regardless of their formats play an important role in ensuring various functions in the organization are carried out. Sound records management identifies which records are vital for the running of the business and ensures the availability of the vital records in-case a disaster occurs. Having a records management programme ensures vital records are availed for the organization to continue with its business functions in case a disaster occurs.

According to Thurston, poor records management can erode an organization's accountability, enhance its potential for corruption, and undermine the confidence of stakeholders and the trustworthiness of the organization's records. Therefore, records are important strategic resource for any organization that needs to show good governance and accountability. Kersey (2003) also agrees that proper record keeping practice would improve accountability. Records are the only reliable and legally verifiable source that can serve as evidence of decisions, actions and transactions.

1.2.4 Good Governance

Good governance according to Lipchak (2002) refers to how government undertakes functions and activities in an efficient, transparent and responsive manner in which citizens participate and engage with the government in the pursuit of their mutually social, political and economic objectives. Good governance therefore, refers to the norms and values that a government takes into account as it governs. This means that Judiciary administers justice on behalf of the public that gave it the mandate and should be transparent to enable the public know how it functions.

Good governance depends on the accountability of governmental bodies as well as on their ability to function efficiently and effectively. To enable Judiciary to function properly it has a responsibility to ensure that it creates and has access to complete and credible information to enable the decision-making process and proper administration of justice in the best interest of the public. Properly managed records are vital tools for good governance in all government bodies. It is clear that for good governance to be sustained, sound records management needs to be introduced and practiced.

1.2.5 Accountability

Accountability implies that organizations and individuals should be able to explain their actions to others in a transparent and justifiable manner (Ngulube 2004). Evans (2008) notes that accountability is the willingness by a government to accept the responsibility of its actions and decisions. The appropriate management of public sector records helps in fostering accountability in that records provide a reliable, legally verifiable source of

evidence of decisions and actions. Accountability is intimately linked to responsibility (Giri, 2000). He argues that it is not only about being accountable for what one is expected to do or perform, but to one's responsibility beyond the legal minimal, to the growth of oneself and the other and thus contributing to society. It is important for the Judiciary to demonstrate accountability not only to its shareholders and stakeholders, but also to the public as a part evidence of social responsibility. From the accountability perspectives, Judiciary has to provide 'evidence of business transactions'. It thus puts more efforts into creating, capturing and preserving documents concerning their decisions and activities.

Accountability requires that the systems of reporting and controls in the organization are appropriate and transparent. At the base of many of these systems lies basic system of recordkeeping. Good recordkeeping is essential for accountability because records are the primary means by which the courts explain their decisions and prove what they have done. The requirement for explanation and proof might come in the form of a single query from a member of the public. Success in answering such queries will depend on how well the court has managed its records.

1.2.6 Transparency

Accountability in a government is promoted by transparency. Transparency is a powerful force that can be applied to fight corruption, improve governance and promote accountability (Lindberg, 2009). It includes the obligation to provide public access to information about the government and the ability by a government to evaluate its

performance, policies and practice in consultation with members of the public (Blagescu et al., 2005). Transparency therefore means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement (O'Reilly, 2009).

Transparency is when a government is open about its actions and ready to engage with the citizenry for their views, comments and input. Amongst the measures that the Judiciary can put in place to bring about this sense of trust is to ensure that public records are available and accessible. Good records management is the tool that can be used to ensure the effective availability and accessibility of public records.

1.3 The Judicial Structure in Kenya

The establishment and creation of Courts in Kenya is in the Kenyan Constitution. The Acts that establish the various Courts are in the following legislations: Judicature Act (Cap 8), Appellate Jurisdiction Act (Cap 9), Magistrates Act (Cap 10) and the Kadhi's Courts Act (Cap 11), (Kinyanjui 2000).

Kenya like any other modern judicial system has a court structure that operates at different levels. Each level of the court has powers to deal with certain cases that are described as the court jurisdiction. Original jurisdiction is in the Magistrates Courts while the Court of Appeal has only appellate jurisdiction that handles appeal cases. The High Court on the other hand has both appellate and original jurisdiction.

1.3.1 Supreme Court

The new Constitution re-established the Supreme Court of Kenya as the highest court in the land. It comprises the Chief Justice, (president of the court), the Deputy Chief Justice (vice-president of the court) and five other judges. To be properly constituted, the court must have five judges.

Supreme Court of Kenya has exclusive original jurisdiction to hear and determine disputes relating to presidential elections and appellate jurisdiction to hear and determine appeals from the Court of Appeal and any other court or tribunal.

Appeals from the Court of Appeal to the Supreme Court are as a matter of right in any case involving the interpretation or application of this Constitution and in any other case in which the Supreme Court, or the Court of Appeal, certifies that a matter of general public importance is involved, subject to clause (5). The Supreme Court may review a certification by the Court of Appeal and either affirm, vary or overturn it.

The Supreme Court of Kenya may also give an opinion at the request of the national Government, State organ, or county government with respect to county governments. All courts, other than the Supreme Court, are bound by its decisions. The judges are appointed by the President with the recommendation of the Judicial Service Commission.

1.3.2 Court of Appeal

The Court of Appeal is established under Article 164 of the Constitution and consists of a number of judges, being not fewer than twelve, as may be prescribed by an Act of Parliament and the Court is to be organized and administered in the manner prescribed by

an Act of Parliament. The Court comprises a president of the Court of Appeal who is elected by the judges of the Court of Appeal from among themselves. The Court of Appeal has jurisdiction to hear appeals from the High Court and any other court or tribunal as prescribed by an Act of Parliament.

The Court of Appeal mainly sits in Nairobi, but travels on circuit to other principal towns in Kenya to hear appeals. In the case of appellate decrees of the High Court, appeals may be made only in one or more of the agreed schedules. The decisions of this court are authoritative and are citable by counsels in the lower courts when the circumstance in a case justifies the production of a citation.

1.3.3 The High Court

The High Court is established under Article 165 and it consists of a number of judges to be prescribed by an Act of Parliament. The Court is organized and administered in the manner prescribed by an Act of Parliament. The Court has a Principal Judge, who is elected by the judges of the High Court from among themselves.

Subject to clause (5), the High Court has—

a) Unlimited original jurisdiction in criminal and civil matters;

b) Jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;

c) Jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;

d) Jurisdiction to hear any question respecting the interpretation of this Constitution Including the determination of

i. The question whether any law is inconsistent with or in contravention of this Constitution;

ii. The question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;

iii. Any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and

iv. A question relating to conflict of laws under Article 191; and

v. Any other jurisdiction, original or appellate, conferred on it by legislation.

The High Court does not have jurisdiction in respect of matters reserved for the exclusive jurisdiction of the Supreme Court under this Constitution or falling within the jurisdiction of the courts contemplated in Article 162 (2).

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

1.3.4 Subordinate Courts

The subordinate courts are provided for under Article 169 of the Constitution and they are—

1. **The Magistrates Courts**

They all have different jurisdictions. Magistrates have different designations: Chief Magistrates, Senior Principal Magistrates, Principal Magistrates, Senior Resident Magistrates, Resident Magistrates and District Magistrates. Appointments to different jurisdictions are made by the Judicial Service Commission. The criminal jurisdiction of magistrates is very wide and embraces most crimes especially those in the Criminal Procedure Code (Cap 75).

2. **The Kadhis' Courts**

The Kadhis' Court is comprised of a Chief Kadhi and such number, being not fewer than three, of other Kadhis as may be prescribed under an Act of Parliament. The jurisdiction of a Kadhis' court is limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts.

3. **The Courts Martial**

Section 84 of the Armed Forces Act gives a court martial power to try any person subject to the Act for any offence which under the Act is triable by court martial, and to award for such an offence any punishment provided by the Act for that offence.

People to be tried by courts martial include members of the Army, Air Force, the Navy and their reserves. However, the court does not apply to the police force.

The courts martial exercises limited criminal jurisdiction, under only one type of law —military law.

Jurisdiction is penal or disciplinary and designed to ensure discipline in the Armed Forces. The cases tried include insubordination, cowardice, fraud, theft, aiding an enemy and neglect of duty. Appeals from the decisions of the courts martial lie with the High Court, which must grant leave before the appeal is heard.

4. **Tribunals**

These are bodies established by Acts of Parliament to exercise judicial or quasi-judicial functions. They supplement ordinary courts in the administration of justice. Tribunals, however, do not have penal jurisdiction.

Tribunals, like the courts, have to respect the Bill of Rights in their decisions and not be repugnant to justice and morality or be inconsistent with the Constitution or other laws of the land. Most tribunals are subject to the supervision of the High Court.

1.3.5 The Milimani Commercial Court

Milimani Commercial Court is a Chief Magistrates court located at Community area, on Upper Hill close right opposite Forodha House. It was (previously known as the Civil Subordinate court) and was initially situated at the law courts – now referred to as Supreme Court - Nairobi on 2nd floor and it was under the jurisdiction of a Senior Resident Magistrate. In 1972 the court was moved to Sheria House to provide accommodation for criminal subordinate courts. At that time there was a court of the

Senior Resident Magistrate, Resident Magistrate and two (2) District magistrates. Sometime later a Kadhi's Court was also housed there to deal with Muslim law relating to personal status, marriage, divorce or inheritance.

Due to demand escalating in Civil and Commercial matters, it was deemed necessary to search for a new location so as to accommodate more court rooms and judicial officers. This was done in 1997 when the Sheria House Civil Subordinate Court was moved to the current location and was named Milimani Commercial Court. The court then was a Senior Principal Magistrate's court and in 1998 it was elevated to a Chief Magistrate's court with Lady Justice Okwengu being the 1st Chief Magistrate. A High Court Division was also set up in this building which was later moved to the Milimani Law Court on 2nd floor in 2010.

The civil matters handled include:

a) Hearing applications under certificate of urgency and related claims under contract.

b) Tenancies debt individual collection.

c) Insurance and accident claims execution

d) Matrimonial cases which includes: divorce, separation and maintenance.

1.3.5.1 Vision

The Judiciary's vision is to be **"the best Judiciary in Africa setting the highest standards in the delivery of quality justice and leading in the development of jurisprudence"**.

1.3.5.2 Mission Statement

The mission of the Judiciary is **"to provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the Constitution of Kenya".**

1.3.5.3 Judiciary's Mandate

The Judiciary derives its mandate from the Constitution of Kenya. Article 159 provides that: Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.

The Judiciary together with development partners namely the UNDP, World Bank and USAID launched a judiciary transformation framework (JTF) 2012-2016 and one of its objectives was to ensure easy access to and expeditious delivery of justice through good records management.

In exercising judicial authority, the courts and tribunals shall be guided by the following principles:-

- Justice shall be done to all, irrespective of status;

- Justice shall not be delayed;

- Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);

- Justice shall be administered without undue regard to procedural technicalities; and

- The purpose and principles of this Constitution shall be protected and promoted.

Traditional dispute resolution mechanisms shall not be used in a way that-

- Contravenes the Bill of Rights;

- Is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or

- Is inconsistent with this Constitution or any written law.
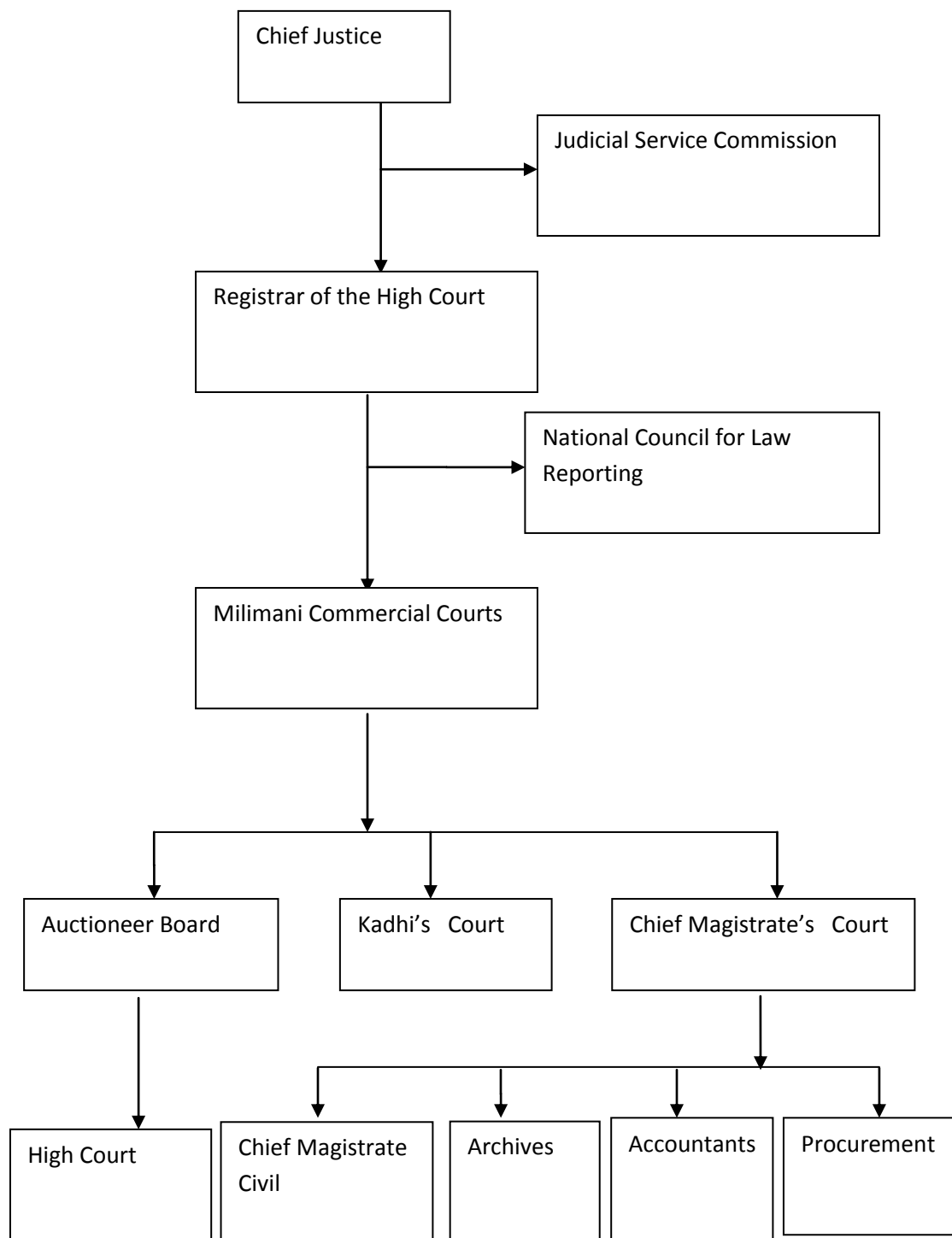
Figure 1.1: The Judiciary Structure: www.judiciary.go.ke

1.3.6 Types of Records Available at Milimani

The types of records available at Milimani Commercial Courts are mostly paper records and a few electronic records, namely:

Adoption Records: An adoption record contains the names of the adopted child or children, their biological parents, and the adopting parents. Although these records have valuable information, they can only be opened by a court order for "good cause shown," and often only by the adopted individual.

Divorce Records: A divorce record normally lists the names of both spouses, the names of their children (if any), the date and location of the marriage, the date of birth of both spouses, the country or State of these births, and the grounds for the divorce. To get a copy of a divorce record, one needs to write to the court in the county where the divorce was granted as well as include the names of the two spouses, the approximate year of the divorce, and one's relationship to the couple, in his or her letter.

Probate records: Probate records are an excellent source of genealogical information. Probate records are created at the time of an individual's death, and are meant to establish the legality of a will. In probate records, you will find the will, which will tell you what types of assets the deceased owned. They also often list the names of survivors, and their relationship to the deceased.

Case Files: A case file contains evidence, testimony, correspondence, depositions, and other documents relevant to the case. Finding a case file normally requires obtaining a case file number from the index, docket, or minutes of the case.

Dockets: After a judiciary agrees to hear a case, it is placed on the court docket until the time of the trial. Typically, an entry on the docket includes the plaintiff and defendant for each case, the date of the case's hearing, the case's file number, and the titles of all documents relevant to the case. Dockets are normally held in chronological order and are typically divided by category, such as criminal, civil, or equity.

Minutes: The minutes, compiled by the clerk of the court, briefly record all actions of the court on a single day. Particularly useful when indexes and dockets cannot be located, they usually list the plaintiff and defendant in the case and state the action taken. They are normally organized chronologically but are rarely indexed.

Orders: The recorded orders of the court can be found in almost every jurisdiction. They generally present a concise summary of the case and state the judgment to be carried out. It is worth noting that appointments of guardians, memorials, naturalizations, and re-recordings of deeds, especially before this century, are often recorded in the order books. In addition, a variety of other administrative data from the locality is also recorded frequently.

1.3.7 The Arrangement of the Records

The records are filed alpha-numerically in the registry metal shelves, in cabinets or in the wooden shelves. They are arranged either horizontally or laterally depending with the registry. The documents filed are kept in manila folder and fastened with treasury tags. The documents are placed in the file chronologically.

1.3.8 The Users of the Records Services

The users of the record services in the Milimani Commercial Court are highlighted below:

Advocates- they file legal papers on behalf of their clients. They represent their clients during court hearing and they also have access to the files by paying a perusal fee. They are granted access to their files so that they can see what the advocate for the defendant has filed and then they see what action to take. This also helps them to advise their clients accordingly.

Litigants- these are members of public who have no representation. They file matters in person and urge out their cases without legal assistance. They are also granted access upon payment of requisite fees. Those who file their suits as pauper don't usually pay court fees.

Researchers- these are mostly law students who are on pupillage. They have access to these records so that they can conduct their studies. Other researchers who are not law students are granted access to the records as long as they have proper authorization from

the Registrar or the Chief Magistrate. This is because court records are sensitive and need to be protected.

Judges and Magistrates – they use these records to hear and determine cases. They normally write the court proceedings in these files after which when the case is over they deliver judgment or court ruling using the handwritten proceedings.

Registry staff- the records are mostly in the care of the registry staff who are accountable for these records. They use the records for filing back documents filed by the advocates of both parties i.e. the plaintiff and the defendant. They ensure that the documents are filed in the right files and that they are paid for. They enter court judgments into the registers using the records.

1.4 Problem Statement

Records are a vital asset in ensuring that the Judiciary is governed effectively and efficiently, and is accountable to its staff and the citizens that it serves. Records support decision-making, accountability, provide evidence of policies, decisions, transactions and activities, and support the courts in cases of litigation.

Proper records management plays a vital role in making sure that records are kept in a favourable environment and can be retrieved easily and anytime. Yet in many courts there are still delays in administration of justice which may be attributed to the poor record keeping practices. Reuben Nyakundi (Judge, 2014) stated that "missing files, inaccurate information, disappearance of key documents from court files and inexplicable

delays in rendering counter services are, unfortunately, still a common feature in court registries leading to inordinate delays in the delivery of justice. There have been instances when an incomplete file is placed before a magistrate or judge and unfortunately the hearing of a matter cannot proceed without a complete file. This leads to delays, which prejudice the rights of the parties. Needless to say then, an inefficient registry is a major barrier for the delivery of justice".

Without proper records management, it is very difficult to account for any decision taken and prosecution of cases becomes difficult. Fraud and dishonesty cannot be easily spotted and be dealt with accordingly if there is no recorded proof.

However much that the judiciary is craving for public confidence, most of the court registries are in a sorry state. There are rampant cases of lost court files, documents and misplacement of files. It is sad to note that every once in a while, work is brought to a standstill because a file is lost or missing. This situation leads to delay in administering justice since there is no provision of records that would provide evidence. As a result, justice is either delayed or denied violating the rights of the people.

Despite the efforts made through Judiciary Transformation Framework Milimani Commercial Court runs the risk of failing to manage its records holistically and systematically. The quest for justice has been hampered by lack of a records management programme which includes policies, physical access to courts, complex and unfriendly procedures, lack of information on court processes and procedures, delays in

determination of cases, and alienation from the justice system. This is evident from the vast amount of records which are not well managed.

The number of cases registered at Milimani Commercial Court increases day by day and thus the court has been faced with problems of storage, retrieval, loss and or misplacement of records. The registries are congested with lots of files thus creating a poor working environment for the staff. Files being found everywhere and heaps of unmanaged records on the floor is a clear indication that either the storage equipments are inadequate and/or unsuitable for these records. The yellowing of documents, mutilation of documents, dusty and stuffy registries clearly show that the storage conditions could be a challenge to the proper management of the records. This could have contributed to problems like lost documents and files; inadequate storage facilities and office equipment; severe deterioration of records; unwarranted waiting times for retrieval of records; uncoordinated recordkeeping practices and poor protection of records from environmental factors. This in turn hampers administration of justice and leads to delays in concluding cases.

Records contain information that is important and confidential. The issue of lost or missing files/documents, leakage of information clearly shows that there is a laxity in the security of records and this is a risk that needs to be addressed urgently. The court has records essential to the running of the court and if lost or destroyed would seriously impair or disrupt normal business. This might place the organization in fiscal or legal difficulty or might jeopardize the rights of citizens.

Delays in administration of justice can be attributed to poor management of records which often leads to poor delivery of services to the clients. The staff wastes a lot of time looking for missing and/or misfiled records, which is not conducive to the functioning of the court. This has contributed dearly to the delay in finalizing court matters thus justice delayed is justice denied. There is a need for proper records management to allow for easy and timely retrieval of information, improved office efficiency, productivity and administration of justice.

It is from this background that the researcher embarked on this study to investigate how sound records management supports the administration of justice at Milimani Commercial Court.

1.5 Aim of the Study

The aim of the study was to investigate the role of records management in supporting the administration of justice at Milimani Commercial court and suggest measures for improvement.

1.6 Objectives

The objectives of the study were to:

1. Examine the policy framework that governs records management practices at Milimani Commercial Court.

2. Determine the effectiveness of the security measures put in place to safeguard the records.

3. Establish the adequacy of the records management practices in supporting the administration of justice at Milimani Commercial Court.

4. Establish if the staff posses the right knowledge and skills in records management in supporting administration of justice.

5. Identify the challenges encountered in the management of records that impact negatively on administration of justice and propose measures for improvement.

1.7 Research Questions

The study attempted to answer the following research questions;

1. How adequate is the policy framework governing records management practices at Milimani Commercial Court?

2. How effective are the security measures put in place to safeguard the records?

3. How adequate are the records management practices in supporting the administration of justice?

4. What kind of knowledge and skills in records management do the staff posses?

5. What are the challenges encountered in the management of records that impact negatively on administration of justice and what measures can be proposed for improvement.

1.8 Assumptions of the Study

The study was based on the assumptions that:

Several factors related to policy frameworks, storage, security issues, corruption, lack of top management support and budgetary allocation for records management have hindered the proper management of court records and hence compromised/hampered the administration of justice to the clients.

A good records management program which addresses issues like; records management policy, the creation of records, storage space and storage equipments, preservation, disaster management and security of records can lead to an effective and efficient court that will create a positive image of the judiciary to the members of public.

1.9 Significance of the Study

It is hoped that the findings of this study will assist the courts to administer justice effectively and thus deliver judgments and rulings at a minimum time possible saving the clients time. Sound records management will enable the court to hear and determine cases promptly without delay due to availability of information.

The comprehensive investigation will make a contribution towards ensuring there is top management support and a positive attitude towards records management by the staff. The staff as a whole will appreciate records management and endeavour to protect and manage the records professionally.

The study findings and recommendations could assist Milimani and other courts in ensuring their records are protected and appreciate the need for having sound records management practices to maintain the integrity of the records. The researcher hopes that the study will form a basis for further research on how sound records management can support the administration of justice. This will lead to generation of new ideas for the better and efficient management of records. The study will enable the staff to re-engineer their service delivery since they will have a better understanding of their information needs, hence reduce backlog in the justice system.

1.10 Scope and Limitations

Though there are many courts in Kenya, the study was limited to Milimani Commercial Court which is the only civil court in the country within Nairobi area. The study focused on the court activities that the users engage in and how proper records management aids in administration of justice. The study was carried out at a time when the judiciary was undergoing transformation and vetting of judicial officers. It was therefore difficult for the researcher to get all the needed information. Some participants were a bit reluctant to participate in the study because they feared they might be victimized by the Judicial Service Commission. But the researcher reassured them that the research was purely for academic purposes and consequently they agreed to participate.

1.11 Definition of Key Terms:

Advocates: A person learned in the law and duly admitted to practice, his obligation is to his clients with advice, and pleads for him/her in the open court.

Court: An organ of the government, belonging to the judicial department, whose function is the application of the laws on controversies brought before it and the public administration of justice is delegated.

Judge: A public officer appointed to preside and to administer the law in a court of justice.

Litigant: Person involved in or initiating a law suit.

Magistrates: A public civil officer invested with some part of the legislative, executive, or judicial power, in a narrower sense, the term only includes interior judicial officers such as justice of the peace.

Record: ISO 15489-1 defines a record as "information created, received, and maintained as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business."

Records management: the ISO 15489-1 (2001) definition issued by the International Standards Organization which define records management as the field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records, including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records.

Registry: is a unit within an organization charged with the responsibility of managing information resources. It's a place where files and other records are received organized, stored and managed.

Justice: Dictionary.reference.com defines justice as "the quality of being just; righteousness, equitableness, or moral rightness: to uphold the justice of a cause."

Administration of justice: According to www.duhaime.org/legaldictionary administration of justice is "the personnel, activity and structure of the justice system - courts and police - in the detection, investigation, apprehension, interviewing and trial of persons suspected of crime".

1.12 Chapter Summary

This chapter has provided the introduction and background information to the study. It has also provided information that set the pace for the study and served as the basis for subsequent chapters and all other activities conducted during the research. The themes covered are: records and records management, administration of justice, good governance, accountability and transparency, background information on the Judiciary and Milimani Commercial court, statement of the problem, the aim and objectives of the study and significance of the study. The key issue that emerged in the chapter was that records play a vital role in the administration of justice at Milimani Commercial Court.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter deals with literature related to the area of study. The chapter is organized in two sections –theoretical framework and related literature. The first section discusses the theoretical framework while the rest of the chapter discusses the literature on the role of records management and administration of justice.

2.2 Theoretical Framework

A framework refers to the structure of the idea or concept and how it is put together. A theoretical framework then is an essay or narration that interrelate the theories involved in question. It guides the research in determining what things to measure and what relationship to look for (Escalada, 2009).

Many theories have been advanced by renowned records management and Archives professionals towards records management as a concept. Never-the-less, the basic records management theory remains the records life cycle model which led to the development of the records continuum model. According to Shepherd and Yeo (2003), all the records management models originated from the life-cycle and records continuum approaches.

A study conducted by Kemoni (2008) revealed that there are other existing records management models which include the following:

- The International Council on Archives (ICA) Electronic Records Management Guidelines (Model);

- The National Archives of Australia Records Management Guidelines (AS ISO 15489 2002);

- The National Archives of Australia Digital Recordkeeping Guidelines 2004;

- The National Archives and Records Service of South Africa Guidelines (Model);

- The National Archive (TNA) 2005 model;

- The Victorian Electronic Records Strategy Model (VERS);

- The University of Pittsburgh Electronic Records Management Model;

- State Records Authority of New South Wales;

- The Design and Implementation of Record Keeping Systems (DIRKS) Model.

In coming up with the theoretical framework of this study several records management models were taken into consideration bearing in mind that the records generated by Milimani Commercial court are predominantly paper based and very few are electronic. Several models were considered this is because the court serves users who demand quality services. This was geared towards ensuring the appropriate and relevant models were used in the study. The first and foremost model that was considered was the records life cycle concept or model.

2.3 The Records Life Cycle Model

Theodore Schellenberg invented the records life-cycle concept while working in the National Archives of the USA in the 1930s (Shepherd and Yeo 2003). In records life cycle records pass three stages, namely: active, semi-active and non-active stage.

Record life cycle is based on the premise that any record has life, and that like any organic being once it has been created it has an active life in maturity, a less active life in old age, and in the end is discarded- it dies and either it is destroyed or transferred to the archives. This is thought as the lifespan or time period from creation or receipt of a record through its useful life to its final disposition.

According to Xiaomi (2003) the lifecycle model uses a birth-to-death analogy to describe records as passing through a series of stages. It provides a fragmented framework for recordkeeping by: artificially dividing the mission of records and archives management; dismantling the responsibilities of records managers and archivists into distinct roles; limiting ways of thinking about custody through narrow selection criteria; viewing records as tangible physical objects in a paper world and static environment.

This model identified stages in the useful life of records which provide opportunities for managers to intervene effectively (Pederson, 2000). Atherton (1985) describes the life cycle in four phases- record and file creation, record use and maintenance, record appraisal and repository management. This effectively divided the profession in two: the records management phase and the archival phase.

This model is useful because it enables record managers to track in a sequential process the progress of a record and to ensure that the right processes are undertaken at each phase of its life (Atherton, 1985; Williams, 2006).

However, this model falls short of the practicalities. This is because not all records follow a similar path. Some records are created with an archival value already attached to them and therefore not considered for destruction at all. Whereas, others are born ephemeral and thus if one has no particular interest, then such records need not be kept at all. The reality here is that records can go in and out of currency or backwards and forwards around the lifecycle.

Strict adherence to its principles undermines any trend towards cooperation and coordination of archivists and records managers and that the life cycle negates the concept of the transactional and evidential nature of records, whether they have enduring value or not (McKemmish, 1995). Willams, (2006) citing Schellengberg, states that the life cycle represents Schellenberg's view of a clear division between records and archives. In practice, record managers have traditionally been responsible for managing the current and semi-current records and the archivists have taken over the responsibility at the archival stage. At the end of the records life cycle, those records selected for their continuing or enduring value as archives become subject to a further series of archival processes such as appraisal, selection, and acquisition among others.

Because of this distinction of phases, it has been argued that the theory also demarcates the role of records managers and archivist and regards the stage when the archivist

intervenes in the cycle occurring sometime towards the end of the lifecycle when the record becomes inactive and archival. Because of such shortcomings associated with the life cycle model, the Australians developed a more integrated model- the continuum. Thus, the records life cycle theory maybe more applicable to those studies dealing with management of paper-based records in an organization. The theory is not suitable for studies investigating management of electronic records (Kemoni, 2008).

2.3.1 The Records Continuum Model

The shorter Oxford Dictionary defines the term continuum as a continuing thing, quantity, or substance; a continuous series of elements passing into each other. Mckemmish (1997) defines "continuum" as something continuous of which no separate parts are discernible, a continuous series of elements passing into each other. As defined in the Australian standard 4390, "the records continuum is a consistent and coherent regime of management processes from the time of creation of records (and before creation, in the design of recordkeeping systems), through to the preservation and use of records as archives". Thus, the model can be used as theoretical foundation of studies with management of both paper and electronic records and archives.

The continuum approach rejects the time-based linear approach, in which records progress through different stages in their lifecycle; instead it posts that records can be used simultaneously for many different purposes- for instance, serving current organizational needs, being managed and preserved in an archive, and forming a resource for researchers. According to Atherton (1985), all stages of records management are

84interrelated, forming a continuum in which both records managers and archivists are involved, to varying degrees, in the ongoing management of recorded information. She explained how the life cycle stages that records supposedly underwent were in fact a series of recurring activities within both archives and records management. The underlying unifying or linking factor in the continuum was the service function to the records' creators and all users. Atherton's view pointed out the dangers of separating records management and archives administration under the life cycle model.

2.3.2 The Records Continuum Diagram

The Records Continuum Model provides a useful framework for the exploration of the continuum of responsibilities that relate to recordkeeping
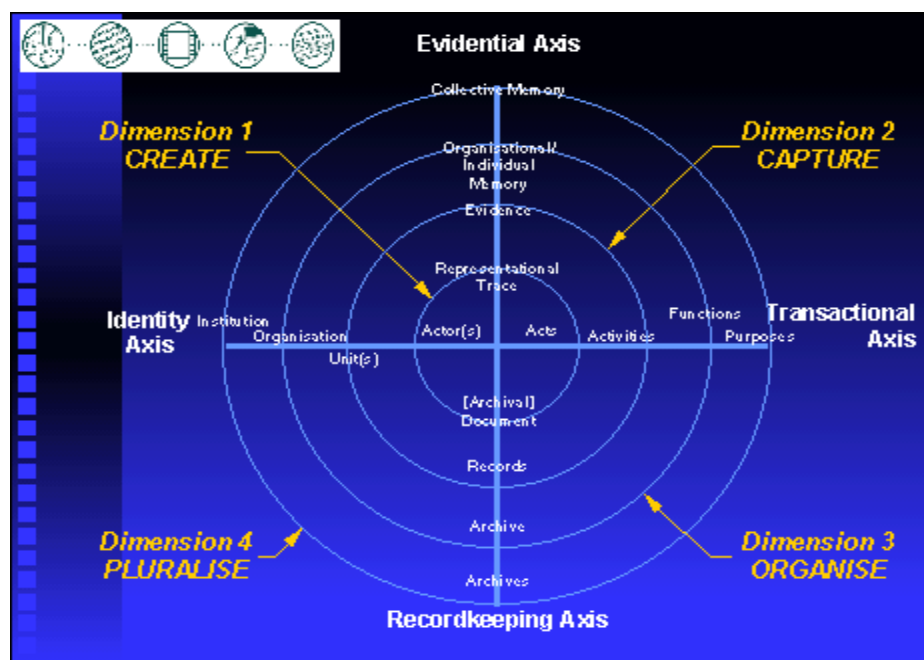
Figure 2.: Records Continuum Diagram (http://www.infotech.monash.edu.au)

2.3.3 The dimensions of the records continuum

1D Create

The first dimension encompasses the actors who carry out the act (decisions, communications, and acts), the acts themselves, the documents which record the acts, and the trace, the representation of the acts.

2D Capture

The second dimension encompasses the personal and corporate recordkeeping systems which capture documents in context in ways which support their capacity to act as evidence of the social and business activities of the units responsible for the activities.

One way to think about 1D and 2D might be as the implementation dimensions where the players might be desktop operators and managers, and recordkeeping professionals with operational roles. When operating in these dimensions, we are concerned with taking the trace and ensuring that it can function as evidence.

3D Organise

The third dimension encompasses the organization of recordkeeping processes. It is concerned with the manner in which a corporate body or individual defines its recordkeeping regime and in so doing constitutes/forms the archive as memory of its business or social functions.

4D Pluralise

The fourth dimension concerns the manner in which the archives are brought into an encompassing (ambient) framework in order to provide a collective social, historical and cultural memory of the institutionalized social purposes and roles of individuals and corporate bodies.

3D and 4D can be thought of as the control, regulation, standardization and auditing dimensions - where recordkeeping professionals with steering roles operate. In the third dimension, we are concerned with 'insider' issues to do with forming, managing and providing access to the corporate memory. In the fourth dimension, we're essentially on the 'outside' looking in, concerned with the constitution of collective memory in a way that crosses organizational and jurisdictional boundaries.

The Record Continuum as a model concept was formulated in the 1990s by Australian theorist Frank Upward based on four principles:

1. A concept of "record" which is inclusive of records of continuing value (archives), stresses their uses for transactionality, evidentiary and memory purposes, and unified approach to archiving/recordkeeping whether records are kept for split second or a millennium.

2. There is a focus on records as logical rather than physical entities, regardless of whether they are in paper or electronic form.

3. Institutionalization of the recordkeeping profession's role requires a particular emphasis on the need to integrate recordkeeping into business and societal processes and purposes.

4. Archival science is the foundation for organizing knowledge about recordkeeping. Such knowledge is revisable but can be structured and can be explored in terms of the operation of principles for action in the past, the present and the future.

Mckemmish (2002) points out that the model provides a graphical tool for framing issues about the relationship between record managers and archivists, past, present and future, and for thinking strategically about working collaboratively and building partnerships with other stakeholders.

In a continuum, there are no separate steps (Xiaomi, 2001). Managing records was seen as a continuous process in which one element of the continuum passed seamlessly into another. Millar (1997) identifies the following four actions of records care under the records continuum model:

- **Identification and acquisition**- Records management actions are the creation or acquisition of records, while archives management actions relate to the selection and acquisition of archives.

- **Intellectual control**- Records management actions include classification of records within a logical system, while archives management actions relate to the arrangement and description of archive.

- **Access**- Records management actions relate to the maintenance and use of records, while archives management actions relate to the description of archives.

- **Physical control**- Records management actions are disposal by destruction of records, or their transfer to the national archives, while archives management actions relate to the preservation of archives.

Xiaomi, (citing Flynn 2001) observes that the records continuum model has six characteristics as follows:

- A unified and homogenous system for the management of records (including archives) in any format throughout their lifetime, however long or short that life time is;

- The synchronic existence of a record or an accumulation of records in more than one "dimension" of context and use, rather than the diachronic movement of a record or accumulation of records through one discrete and compartmentalized lifecycle stage after another.

- An engagement with the establishment and design or record-keeping systems, even before records have been created.

- Co-operation and sharing of responsibility for records (including archive) and recordkeeping systems, particularly between records managers and archivists.

- The concept of service to the users of records, whether internal or external to the creating organization, throughout the lifetime of those records;

- A sense of the provenance, organizational and social context in which records are created and maintained.

Kemoni (2008) citing Millar (1997) identifies four actions of records care under the records continuum model to be:

- Identification and acquisition

- Intellectual control

- Access

- Physical control

All these actions on records will ensure that the information content of the records is properly secured.

Records continuum is thus a continuous and is a time/space construct not a life model. No separate parts of a continuum are readily discernible, and its elements pass into each other. The records continuum shows the processes of records management and archives management moving towards integration (Xiaomi, 2001).

2.3.4 Criticism of the Records Continuum Model

Although the records continuum model has been, and continues to be, of benefit to recordkeeping professionals, the model has generated certain concerns and fears amongst them. For example, Picot (1999) observes that the model and notions of its theory ignited some fear and threats in record and archives professionals. The fear was that records managers and archivists shared both territory and professional competencies and thus, the continuum model posed a threat to their autonomy. She however noted that the model could be used to justify restructuring, job cuts or changes in workplace practices

2.3.5 DIRKS Model

The DIRKS Model sets out a methodology which can be used for reviewing existing recordkeeping systems or building new ones based on eight stages (Kemoni, 2008). This Model was considered not appropriate since the study was not focused on the design and implementation of record keeping systems but on the use, management and contribution of sound records management in supporting the administration of justice.

2.3.6 Relevance of the Records Continuum Model to the Study

This study was based on the Records Continuum Model and according to Marchall (2000) the records continuum's primary focus is the multiple purposes of records. It aims for the development of recordkeeping systems that capture, manage and maintain records with sound evidential characteristics for as long as the records are of value to the organization, any successor or society.

This model was therefore relevant in its first dimension in that the 'actors' in this case represented the different record users all involved in the creation of court records to meet the immediate and future needs of court users/public. In the second dimension, 'capture' represented the creation of court records to capture the facts about the cases and services provided to court users and served as evidence of how court business activities were carried out at Milimani Commercial Court. The Model describes a continuum as something continuous and dynamic.

In its third dimension the Model was also therefore relevant since it puts emphasis on the need for an organization to define its recordkeeping regime. Court records needed to be made easily accessible to judicial officers, advocates, registry staff, litigants and law students. This meant that these records had to be managed within a recordkeeping system which determined how they were arranged, categorized, accessed, retrieved and stored. This is very important in a large institution like Milimani which houses many records. These records need to be properly managed right from the time of their creation and throughout their lifecycle to their archiving. The records continuum model describes the processes for managing records (paper as well as digital) from the point of creation.

The Model in its fourth dimension calls for an integrated approach in the management of records and archives to satisfy court needs, business requirements, society needs and other forms of collective memory. Within the view of the continuum concept, an archival record can be retrieved and returned to a current status just as a newly created recorded can be archived immediately after its use. This scenario is more practical in Milimani

Court, where for example a record that had been dismissed and is kept in the archives, the advocate or litigant may bring an application to reinstate the suit, the file will go to court and once the application succeeds the file becomes active and will be returned to current use.

The RC model is thus tailor-made for Mililani Commercial Court, which is a modern organization that is increasingly being transformed and is embracing computerization in the creation and management of records to support administration of justice.

According to Mckemmish (2002), the best practice mechanism behind the records continuum model uses an integrated approach for managing records and archives. Records managers and archivists are brought together under an integrated recordkeeping framework with the same goal: to guarantee the reliability, authenticity and integrity of records. For Milimani the records continuum framework is quite ideal in that it advocates for cooperation between the users and the records professionals in various departments in order to: ensure the creation of the right records, containing the right information, in the right format: organize the records and analyze their content and significance to facilitate their availability; make them available promptly to those (administrators, advocates, litigants and researchers alike) who have a right and requirement to see them; systematically dispose off records that are no longer required; and protect and preserve the information for as long as it may be needed (if necessary, forever). This co-operation is currently lacking.

The current study set out to investigate the role of records management in supporting the administration of justice. The Record Continuum model is the models of choice since it emphasizes an integrated and proactive approach, both of which are prerequisites to records management.

Poor storage of court records impacts negatively on speed of service delivery. For Milimani the model is quite ideal in that it advocates for cooperation between the users and the records professionals in various departments in order to: ensure the creation of the right records, containing the right information, in the right format: organize the records and analyze their content and significance to facilitate their availability; make them available promptly to those (administrators, advocates, litigants and researchers alike) who have a right and requirement to see them; systematically dispose of records that are no longer required; and protect and preserve the information for as long as it may be needed (if necessary, forever). Without proper records the administration of justice will be poor and this will affect dispensation of justice.

2.4 Importance of Records

Mnjama and Wamukoya (2004) point out that "records are valuable assets that need to be managed and protected". Besides providing essential evidence of organizational activities, transactions and decisions, records also support business functions and are critical for the assessment of organizational performance. The authors also say that without reliable records, governments cannot effectively manage state resources, civil service, delivery of services such as education and health care. Moreover, without

accurate and reliable records, and effective systems to manage them, governments cannot be held accountable for their decisions and actions, and the rights and entitlements of citizens and corporate bodies cannot be upheld.

Shepherd and Yeo (2003) note that there are three key values which can be met by good records: First, organizations use records in the conduct of current business, to enable decisions to be made and actions taken. Records provide access to precedents and policies, and evidence of what was done or decided in the past. They enable the organization to guard against fraud and to protect their rights and assets.

Secondly, organizations use records to support accountability, when they need to prove that they have met their obligations or complied with best practice or established policies. Organizations are accountable in many ways, to meet legal, regulatory and fiscal requirements, undergo audits and inspections, or provide explanations for what was done. Internally, records are used to prove or assess performance. External accountability is especially important to public sector bodies, which are responsible for their actions to government and the wider public.

The ability of citizens to engage effectively with the local government, and their trust in public agencies, is often contingent upon availability of information. Relevant information, complete and concise, put together in an easily understandable format, and made available to the public either proactively or upon request, can go a long way in enhancing transparency and improving citizen participation in local government (Urban Governance Toolkit 2004).

Records provide a reliable, legally verifiable source of evidence of decisions and actions. They document compliance or non-compliance with laws, rules and procedures (World Bank 2000). Records play a crucial role in most human endeavours and they are essential to all our business and social interactions.

Perhaps the best summary of the usefulness of records is that which is provided by Piggott (2002) a senior information solutions consultant with the world bank who says that "without access to good records, officials are forced to take decisions on an ad hoc basis without the benefit of institutional memory, fraud cannot be proven, meaningful audits cannot be carried out and government actions are not open to review."

2.4.1 Records Management Concept

There is no universally accepted definition of the term "records management" and this is an indication that the discipline of records management is dynamic (Yusof and Chell 1999). However, various authors and organizations have attempted to define the term. Taylor (1996) defines records management as "the discipline and organizational function of managing records to meet operational business needs, accountability requirements and community expectations". ARMA defines records management as, "the systematic control of all records from their creation or receipt through their processing, distribution, organization, storage and retrieval, to their ultimate disposition". The records management discipline is based on organized standards.

Other definitions have been put forward by authors such as Yusof and Chell (2005), Roper and Millar (1999), Shepherd and Yeo (2003). This study chose to adopt the ISO

15489-1 (2001) definition issued by the International Standards Organization which defines records management as "the field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records, including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records".

Mat-Isa (2005) notes that strategic approach to records management is vital in order to facilitate recordkeeping and retrieval. An effective Record management program should be designed to achieve the following objectives: ensure that all needed business records are retained; ensure that all records that are required to be retained by statute, regulation, or contract are retained for the appropriate and approved period of time; ensure that all authorized users can access business records efficiently; ensure that all business records can be read, used and regarded as authentic once located; establish litigation hold procedures to ensure that potentially responsive documents are not destroyed once litigation and/or government investigation is reasonably anticipated; and establish procedures to ensure the timely destruction of appropriate documents as their respective retention periods expire (EDRM:2006).

Emery (2005) reports that essential elements of a records management program include: a records retention policy and a set of procedures where records are classified, retention periods are defined and destruction procedures are prescribed. Classification of records and then maintaining them with the appropriate metadata are necessary so that this information can be retrieved quickly when required. In 2001, the International Standards

Organization (ISO) issued standard 15489, the International Records management Standard, which specifies what should be included in a records program and establishes criteria for businesses and government agencies throughout the world.

2.4.2 Benefits of Good Records Management

There are many benefits to be gained from implementing records management. Shepherd (2006) emphasizes the significance of records management by highlighting the following benefits:

- Records which are well managed as part of an appropriate records management programme will help an organization to conduct business in an efficient, accountable manner, deliver services consistently, support managerial decision making and transparent policy formation and ensure continuity in policy execution, management and administration.

- More widely, effective RM will help the organization to respond to planned or unplanned events such as audits or disasters. It will also protect the present and future interests of stakeholders, including employees, clients, government policy makers, historians and citizens, help meet regulatory and audit requirements, provide evidence of organizational activity for litigation support, protect the interests and rights of stakeholders and maintain corporate memory.

- An effective records management programme will ensure that records are available for use when needed, that privacy and confidentiality are maintained

and that redundant records are destroyed. Without effective records management these objectives will be more difficult to achieve.

Therefore, records are very useful in all areas of human activity. The Government of South Australia (2005) observes that there are a multitude of benefits that can be expected from agencies and authorities achieving adequate records management such as:

➢ Ability to mitigate the considerable risks associated with inadequate records management practice, specifically accountability, transparency, sound corporate governance and public sector efficiency.

➢ Compliance with statutory requirements.

➢ Ability to provide enterprise-wide access to documents, records and information resources contained within multiple databases.

➢ Ability to manage electronic documents and records as inviolate and credible evidence.

➢ Knowledge of fundamental records management practices and how they relate to FOI and information privacy principles.

➢ Increased productivity and individual accountability.

According to Cummings (2001), a good records management program is key to providing good public services: services are documented in the records; proves that statutes, regulations, and ordinances have been followed and that public funds have been properly

expended; allows for efficient access to records; can reduce storage costs; saves on discovery costs and helps keep premium down.

Kemoni, Ngulube and Stilwell (2007) add that records are required for developing and implementing policies, planning, keeping track of actions, achieving consistency in decision-making, providing effective service to citizens and achieving greater efficiency.

2.4.3 Risks of Poor Records Management

Records are valuable resources and assets. Hence organizations should seek to protect and preserve their records as evidence of actions. McKinnon, (1994) warns that poor recordkeeping attracts corruption like flies to a carcass. Excessive retention of records will cause difficulties in retrieving records, but failure to create adequate records or to maintain them may have more serious consequences. According to Thurston, poor records management can erode an organization's accountability, enhance its potential for corruption, and undermine the confidence of stakeholders and the trustworthiness of the organization's records.

Kallaus (1987) contends that poor record keeping can lead to: loss of information resulting to loss of evidence; waste of resources-financial and physical; inadequate and poor decision making due to inadequate information; loss of confidence among customers due to loss or misplacement of their records; demoralizes staff as a result of long and tiring duration taken in search of and retrieval of records; and poor recording of corporate memory.

Wamukoya (2007) notes that poor records keeping results in: poor decision making; lack of transparency and accountability; theft, corruption and plunder of resources; mistrust of the organization and those who run it; frustrations amongst staff, stakeholders and citizens; poor productivity and failure to meet obligations and mandates; vulnerability to lawsuits. All these shortcomings expose an entity to grave risks which endanger its continued existence. Therefore, records are important strategic resources for any organization that needs to show good governance and accountability. Kersey (2003) also contends that proper record keeping practice would improve accountability.

2.5 Records Management Policy

A policy is a statement of agreed intent that clearly and unequivocally sets out an organization's views with respect to a particular matter. It is also a set of principles or rules that provide a definite direction for an organization. Policies assist in defining what must be done in the organization.

A records management policy is a cornerstone of effective management of records in an organization. A records management policy:

- demonstrates to employees and stakeholders that managing records is important to the organization

- provides a statement of intentions that underpins a records management programme serves as a mandate for the activities of the records manager; and

- provides a framework for supporting documents such as procedures, business rules, disposal schedules etc. www.justice.gov.uk/guidance/docs/foi-section-46-code-of-practice.pdf

A policy provides the framework within which such a programme operates. It affirms an organisation's commitment to ensure that authentic, reliable, and usable records are created, captured, and managed to a standard of best practice and to meet the organisation's business and legislative requirements. It can be an effective means of communicating to staff their recordkeeping responsibilities.

Cook (1999) argues that good records management begins with establishing policies, procedures and priorities before records are even created. According to Wamukoya (2007) records management constitute a form of management policy which ensures that records are part of a system in which information flows logically and systematically within the organisation, satisfying the needs of creators, users and custodians.

Thurston (2007) mentions that most African countries developed and implemented records management policy on an ad hoc basis. Wamukoya (2007) points out that bad records management is compounded by a number of factors such as the lack of national policy on records management, lack of records management standards, lack of record management guides/manuals, and lack of trained staff in records management who should provide guidance or assistance to institutions.

Record Management Policy also provides a framework for best practice in record management that can be followed by all employees. They help to ensure risk is minimized and that any security incidents are effectively responded to. Griffin (2003) observes that in many governments, policies and guidance for managing the records of government are often non-existent and the legislative and regulatory framework is often weak or out-dated.

2.6 Security of Records

Security of records is one of the principles of good records management which states that records must be securely maintained to prevent unauthorized access, alteration, damage or removal. Records must therefore be stored in a secure environment, the degree of security reflecting the sensitivity and importance of the contents. Information security thus can be said to be an information assurance. That is, it is protected from unauthorised access. Macmillan English Dictionary defines security as "Safety from attack, harm or damage." According to Penn et al (1994) protection of information materials encompasses the caring of records to guard them against fire, water, pests and vandals so as to ensure that proper environmental controls are in place and functioning. Wallace et al (1992) share this opinion.

Today, security of records in organisations have been hampered by a number of things among them lack of security policies, use of in-appropriate filing equipments, lack of training of staff on how to manage records, poor housing of records and lack of support from the top management on record management. Not only are records the key to

preservation of organisations and societal memory, but also contribute to the realization of good governance and development of a national identity. Securely kept records can be used in policy formulation leading to faster decision making processes which directly impact efficiency and effectiveness of service delivery in organisations.

Security measures should be based on good planning, to ensure budget and staff limitation are taken into consideration and the specific needs of the organisation are identified. It further describes that an assessment of security should be carried out regularly to find out the possible effect of the security procedures on staff and users. An organisation should also establish security equipment being used in the registries and archives. It is therefore everyone's responsibility in the organization and in the society to keep records secure at all times in order to facilitate reference today and in the future.

2.6.1 Security Measures Used To Ensure Integrity of Records

Accidents can and do happen to office employees. The practice of safety at one's place of work is concerned with protecting employees and clients from hazards that may arise in the work environment. It deals with the prevention of accidents and minimization of resulting loss and damage to persons and property. Penn et al (1994) share these views and state that records should be protected against damage, destruction, or loss. These hazards could either be natural or manmade. Wallace et al (1992) list natural disasters as floods, tornadoes, earthquakes, fires and nuclear threats while manmade disasters are theft, security leaks, loss of records due to misplacement, water, insects, rodents, mould, mildew, hazardous chemicals, light, dust and improper temperature and humidity

controls. Derek (1999) finds that other factors such as accident and bomb alerts can obviously affect public safety.

Kiprono (2003) states that security may be viewed in two perspectives: -

- Physical Security and

- Collection security

Physical security deals with the information centre building while collection security involves making sure that information materials do not disappear during the use or at other times.

2.6.2 Building and Site

A building is the place in which an organisation is housed and the site is the place on which the building sits. Kwok et al (1999) opine that information on building and sites is essential for any security model as they are vulnerable to illegal access, fire, flooding, water pipe leakage, vehicle/aircraft impact and terrorist attacks. It is the role of the Records Manager to ensure that during normal working hours and even after closing hours security measures have been put in place. Acker et al (2010) opine that an archives and record storage building must have working environments that are safe, secure, healthy, comfortable, durable, aesthetically pleasing and be accessible.

Security of a building and site is guaranteed by making sure that the building is fit with strong doors with dead bolt locks and ground floor windows should have metal grills. All windows and doors should be locked and after hour's patrols are conducted daily. The

distributions of door and cabinet keys are limited to only authorized personnel. The Key system must be based on master lock system and that in the case of power failure or emergency, the facility should have emergency override switches. Penn et al (1994) stress that at all times locking systems, security alarms and surveillance equipment should be installed so as to deter intruders.

Ellis (1993) finds that a supervised entry into a building is another way of ensuring security of records in a building. A record of any one entering or leaving the building should be maintained at all times and should be available at the entrance. Scanners should be put in strategic points so as to screen anyone who enters into the building and their bags. A number of hazards must therefore be avoided or minimized particularly in the storage areas.

2.7 Records Management Practices

While we live in the information age, not all information created or received by an organisation rises to the level of being an official business record – this important subset requires deliberate management because these records provide evidence of business transactions, decisions and satisfaction of legal obligations. Organisations need to demonstrate "good faith" intentions to follow these best practices consistently and accurately, with audit and satisfaction of legal obligations playing a vital role for defensibility namely: (http://www.ironmtn.com.au).

2.7.1 Application of Policies and Procedures

Create records management policies and procedures that can be applied consistently and uniformly across the organization. In particular, policies around record disposition and destruction should be consistently and systematically applied. Policies should address both physical and electronic records.

2.7.2 Identification of file Formats Used within the Organization

The types of electronic data and documents that are being created and used in the organization should be reviewed. Policies should be put in place as to how to handle the most frequently occurring content types as records.

2.7.3 Creation of an Organization-wide Retention Schedule

The records retention schedule should be applied consistently across the organization and be based on legal, regulatory and operational requirements. The schedule should define the types of records and how they are to be classified in the file plan. Legal requirements should be put in place to determine the proper retention periods and proper policies for preserving and destroying different types of records. The retention schedule should be kept current by reviewing and updating it at least once every two years. For Milimani Commercial Court Cap 14 and Cap 19 laws of Kenya will apply.

2.7.4 Access and Indexing

All records should be classified and properly indexed for easy searching and retrieval. The classification scheme should form the basis for the file plan for the records system.

Both paper and electronic filing systems should be based on the same record classification scheme.

2.7.5 Audits

Records Management should be included as part of any regularly scheduled company audit. The audit needs to ensure consistency and compliance with legal requirements.

2.7.6 Record Disposal

The lifecycle schedule associated with a record determines the ultimate disposition of the record. Typically the method of disposal is determined by record type or by the kind of media involved. The method of disposal needs to account for suspended records, or those with holds, and the process should adhere to all confidentiality and security requirements. http://www.forntek.com

2.8 Role of Records Management in Supporting Administration of Justice

According to Roper (1999) "Records are fundamental to the efficient and effective operation of the legal system of a country and perhaps are even more crucial to the administration of law than to any other function of the public sector. Not only are current records in daily use for legal reasons, but records of previous actions are also routinely retrieved and used by a range of legal agencies".

Efficient and accountable court systems are widely recognized as a key component in the delivery of justice to citizens. Delays in registering cases, locating records and filing documentation all have a direct impact on citizens and their legal rights. No wonder Thurston (2005) argues that:

"Dysfunctional records management undermines legal and judicial reform. Decisions are made without full information about cases, and the absence of systematic recordkeeping and controls leaves scope for corruption or collusion between court officials and lawyers. Court time is wasted, delays are created, and the judiciary's standing is lowered. The large volume of records passing through a typical court system, their sensitivity, and time pressures on courts makes effective records management essential."

The practice of law relies on information. The management of legal records needs both special consideration as well as special attention. Twining and Quick (1994) indicate that records are not only a product but also an integral part of any process of administration and this is especially true of the process of administering the law, in which precedence and due form play such an important role.

Lack of evidence in the form of records can lead to failure of the judicial system to bring justice to the citizens. This leads to loss of faith in the administration of justice by the citizens. In the context of managing legal records, 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 due to poor record keeping practices, the accused person might be denied justice. There is also a tendency for some kinds of civil litigation to continue for many years or revive after a long period. Good record keeping enables the concerned parties to enquire about the

status of their case. The overall effect being 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 record keeping system for the judicial system. The same thing applies to court staff responsible for safeguarding case files. When they are able to access and retrieve records in a timely manner, the working environment becomes conducive for them. If they cannot locate a case file relating to a trial it becomes impossible for a judge or magistrate to pass a judgment thus justice being denied or delayed to the person who lodged the case (the plaintiff).

2.8.1 Goals to Strengthening the Administration of Justice through Records Management

Milimani Commercial Court is committed to improving the administration of justice. Every person has the right to a prompt, fair, and impartial hearing. The pursuit of justice thus requires that cases be heard in a timely manner and processed efficiently. To accomplish this goal, the courts require sound records management and efficient management of information and resources.

As case filings increase and the public demand for information soars, the court must use innovative technology to enhance operations, provide prompt, reliable information to decision makers, and improve service to the public.

Improving Public Access, Transparency, and Accountability

Public confidence in the courts is predicated, in part, on transparency of processes, access to court records and reliable information, and timely resolution of disputes. In this era of "on demand" information, the public expects instant access to judicial branch information. Case information and documents must be readily available. Courts are also acquiring the ability to allow electronic filing and access to court records.

To serve the growing number of non- English speaking members of the public, information about court processes and procedures must be provided in languages other than English, and the number of available, qualified interpreters must be increased.

2.8.2 Records Management Staff: Quantity and Quality

In their study, Ganster and Dwyer (1995) found out that, at the group level of analysis, groups that are adequately or over staffed appeared to be more productive than understaffed groups. On the other hand they also found out that at individual level of analysis, staffing sufficiency showed a significant and negative indirect effect on performance.

In regard to quality of staff in the work place, Clark (2000) points out that in-service training within social service training is recognised as a key means through which staff are provided with the necessary knowledge and skills to improve overall agency performance and achieve the objectives of social policy. Therefore, it may be argued that the quality of any records management program is directly related to the quality of staff responsible for records management (World Bank (2009).

Burns, Ferris and Liatsopoulos (2009) link the problem of poor staffing and inappropriate training in organisations to lack of money or inadequate funding. Millar (2001) advices that when planning a records management project it is necessary to consider the number of staff needed, the tasks they would undertake, their particular qualifications and the requirements for their promotion through the civil service ladder. On the other hand Tella, Ayeni, and Popoola (2007) note that staff training was an indispensable strategy for motivating workers. Staff at Milimani Commercial Court need to be trained so as to acquire the necessary knowledge and skills.

2.9 The Records Management Challenges

Goverments' worldwide recognize the need to protect records owing to their importance and value in the conduct of business, meeting legal and accountability requirements and for historical reasons. This has led to the enactment of records and archival legislation by countries worldwide to ensure that its records and archives are properly managed and preserved over time. Such legislation provides the legal framework for the management and preservation of public records which include court records. According to ACARM (2003) the aim of most records and archival legisaltion is to:

- establish a single records and archival authority to be concerned with the management of public records and archives

- empower archival authorities to transfer records of enduring value to an archival institution for their care and preservation

- prohibit the destruction of public records without prior authority

- to confer the right of access to records and archvies

In Kenya, for example, Kenya Public Archives and Documentation Service Act govern the management and preservation of public records. The Act among other powers and responsibilities empowers the Director on the care, preservation, custody and control of any public records. However, the Act does not clearly define the role of the Director of the Kenya National Archives and Documentation Service (KNADS) and that of records creating agencies in respect to the management of public records. As a result KNADS is more concerned with preservation of archives while record creators assume that the responsibility of KNADS covers all aspects of public records management except current records (Mnjama:2003). For this reason most govermental institutions and state corporations as Kemoni (2007) cited by Kemoni & Ngulube (2007) obeserves do not implement the recommendations and advise given by the KNADS personnel regarding proper management of public records. This has resulted to poor state of public sector recordkeeping in Kenya which Kemoni (2007) cited by Kemoni & Ngulube (2007) attributes to factors including lack of top management support, few opportunities for hiring of records personnel, inadequate storage space and general neglect of the records management function. Efforts by the goverment to enhance the management of public records is seen through initiatives which include: the amendment of the public archives & documentation service Act in 1990, issuing of records management circualrs through the inititatives of KNADS, Office of the President and Directorate of Personnel Management and introduction of computerized information management systems in public institutions.

Roper and Millar (1999) argue that record keepers face many challenges when handling their records. They further started that handling huge quantity of records, pressures of work, lack of professionals and inadequate resources are some of the challenges encountered by record keepers.

2.9.1 Large Quantities of Records

Roper and Millar (1999) argue that records are basics to legal systems. They added that large volumes of records tend to accumulate after a relatively short period. The authors further mention that courts usually have a backlog of cases waiting to be heard. Also, the police and public prosecutors deal with an ongoing volume of caseloads of crime. Each of these activities result in records and these records need to be cared for properly. The amount of documents within those files end taking up space quickly. The staff experience difficulty in locating records, missing files/misfiling, sorting documents and identifying key pieces of information. Needless to say, that when access is not optimized, the registry staff's ability to render services in a timely manner is inhibited. This results in lower quality of customer care, burdened staff and overlooked information. To make matters worse, paper records can only be in one place at a time, meaning they are not always accessible to the person who needs them.

2.9.2 Storage

According to IRMT (2002), courts create many records in a short time which need proper storage. Many countries do not have enough resources for physical infrastructure. The issue of storage space is one of the major problems in management of court records.

IRMT (2002) further maintains that due to the shortage of space, in some countries record keepers put case files in bundle of boxes piled on the floor which cause difficulties in retrieval or easy access to the case record. According to Twining and Quick (1994) in some countries it was felt that valuable legal records were being lost:

- through deliberate destruction as a matter of policy;

- through random or arbitrary destruction by those responsible for them; or

- by the operation of nature, fire, revolution, neglect or oversight.

From this point of view, too little was being preserved. They went on to state that, in most countries many institutions had serious problems of storage in relation to costs, space, physical conditions or accessibility. These problems were exacerbated by increases in the volume of records produced. They observed that, many records were inappropriately stored and at the same time, too many records were being preserved for far too long.

Motsaathebe and Mnjama (2009) mentioned that in many countries around the world court registries within the court system suffered from inadequate records storage facilities. They mentioned that some of the storage facilities were not adequate and suitable for the records. Shelves were overcrowded making retrieval of court records from them slow and time consuming. They further mention that due to the problem of storage semi -current records and non -current records are kept together. The danger here is that there will be problems of misfiling/lost files and the files can also be stolen.

Mnjama (2003) attributes some of the poor state of records management keeping in Kenya to lack of adequate storage facilities.

2.9.3 Lack of professionalism in Records Management

Records management is not professionalized in most organizations. People who look after records in many organizations in Africa lack the skills required for managing records throughout their entire life cycle. Another challenge facing management of legal records is lack of adequate and well trained staff. The staffs manning these records are not well trained in the area of records management and archives. Some of the staff engage in unethical practices like hiding of files and misfiling. Therefore they cannot manage these records professionally. The staff are inadequate and demoralized. The staff that have disciplinary cases are sent to the registries. Without adequate well trained staff the records will be poorly managed and there will be no transparency and accountability. This will give an organization a bad image and it may even close its business. Professional staffs need to be employed, they should be people of integrity and who have good public relations.

Qualified and well-trained staff will lead the organization to an advanced stage in terms of operation, growth and quality of work (King 1997). Wamukoya and Mutula (2005) cite IRMT (2003) note that the introduction of the new technology poses a challenge that records and archive management staff should be trained and retrained for the new skills and competencies for effective operation in the new technology. This will enable the government to comply with accountability and defeat corruption and malpractices. The

staff should be equipped with competencies and skills which include, but are not limited to, records management, information management and technology. The skills that are specifically required in electronic records management include creation, capturing, classifying, indexing, storing, retrieving, tracking, appraising, preserving, archiving and disposing

2.10 Chapter Summary

This chapter has provided a review of literature on the topics of records management and administration of justice and the nexus between records management and administration of justice. The review of literature has revealed that there is a strong link between records management and administration of justice and that records management has a critical role to play in the demanding activity of supporting the administration of justice in our courts. To this extent, the literature sources consulted are unanimous that records management should be harnessed as an essential success factor in administration of justice.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter gives details of the pertinent issues that includes research design, population sample and sampling techniques, tools for collection and techniques for data analysis. The data collection methods are discussed in this chapter. A brief overview of case studies is stated and the reasons why it was the preferred method. Qualitative research was used in this study since this enabled the researcher to go beyond the statistical research.

3.2 Research Design

Research design is used to structure the research, to show how all the major parts of the research project work together to try and address the central research questions. The study was largely based on the qualitative research method. The qualitative research approach was chosen because it provided a flexible way of gathering, analyzing and interpreting data collected and it gave the study a descriptive capacity. The qualitative approach was chosen in view of the explorative nature of the study which aimed at describing the role of records management in supporting the administration of justice at Milimani Commercial Court. One of the major distinguishing characteristics of qualitative research is the fact that the researcher attempts to understand people in terms of their description of their own world (Kothari, 2004). The method was preferred because the aim of the study was to gather comprehensive information from the

respondents on their views, experiences and opinions regarding the role of records management in supporting the administration of justice in Milimani Commercial Court. It was important for the researcher to gain in-depth understanding on the subject and qualitative approach was quite appropriate as it allowed probing particularly on unanticipated issues which brought out new insights into the problem thus enriching the study.

This approach was also quite suitable since the researcher was at liberty to seek clarifications on some of the respondents' responses. In the circumstances, the respondents were able to qualify their answers and emphasize on their strong views and opinions, for example on the challenges encountered in the management of records that impact negatively quality service delivery and measures they would propose for improvement. Despite the research being largely qualitative some form of quantitative data was gathered. Aliaga and Gunderson (2002) define quantitative research as "explaining phenomena by collecting numerical data that are analyzed by mathematically based methods". Quantitative research was used to quantify the problem by way of generating numerical data that were transformed into useable statistics. The data was used to compliment the qualitative data and enrich the research findings. The study gave a detailed description and analysis of the role played by records management in supporting the administration of justice at Milimani Commercial Court.

The qualitative approach involved administering interview guides to Judges, Magistrates, advocates, executive officers, court clerks and litigants. The qualitative method enabled

the researcher develop, analyse and interpret, from the sample population, against major themes under investigation**.**

3.3 Study Population

A population is any group of institutions, people or objects that have at least one characteristic in common (Kothari, 2004). The study population included Judicial Officers- Judges and Magistrates who use records for hearing cases and making rulings and judgments, Advocates, Court Clerks and members of the public- who file cases and use the records on a daily basis, the court staff who included the Executive officers and finally the registry staff who manage these records. The target population in this study was 190 respondents comprising 8 Judges, 12 Magistrates, 39 Advocates, 10 Executive officers, 39 Registry staff, 12 Court clerks, 70 Litigants or members of the public.

3.4 Sample and Sampling Procedure

A sample is a subset of the population which is selected to represent the population during the study, whereas sampling procedures is the process of selecting a sample from a population (Mugenda & Mugenda, 1999; Kothari, 2004; Kasomo, 2006). For the purpose of this study, a non-probability technique was used namely; convenience sampling. A convenient sample is described as a group of individuals who are readily available to participate in the study (Kasomo, 2006). Convenience sampling was used because it helped the researcher to gather useful data and information. The method was also appropriate because the respondents were accessible. It was also cost effective and not time consuming.

The respondents were selected using convenience sampling from the population group. This method was used because it ensured that all individuals from the defined population were available to take part in the study. The only drawback to this method is the fact that it can be somewhat biased. The sample population involved participants in the study from whom the data on the problem of the study was collected. It comprised 127 respondents from Milimani Commercial Court, notably, 4 Judges, 7 Magistrates, 26 Advocates, 7 Executive Officers, 26 Registry Staff, 7 Court Clerks and 50 Litigants or Members of the Public. The sampling frame that was used in the study is presented in table 3.1 below;

Table 3.1 Sampling Frame

Participants	Target Population	Sample Size
Judges	8	4
Margistrates	12	7
Advocates	39	26
Executive Officers	10	7
Registry staff	39	26
Court clerks	12	7
Litigants or members of the Public	70	50
Total	**190**	**127**

3.5 Data Collection Tools

In view of the in-depth nature of the study, data were collected using face to face interviews and a review of documentary sources. The two research methods complemented one another leading to comprehensive and reliable data.

3.5.1 Interviews

An interview is the most commonly used research technique because it is a prime qualitative data collecting tool, using personal contact and interaction between the interviewer and interviewee. It is the process of gathering information by asking questions face-to-face (Hawryszkiewyez, 2001, Sammons & Gu, 2008).

Interviews may be either face-to-face or telephonic, and they may be either unstructured or structured. Krathwol (1997) contends that interviews are particularly useful in the following pursuits:

- Exploring, probing and searching to determine what is especially significant about a person or situation.

- Determining how individuals perceive their situation and its significance for them.

- Identifying the cause and effect relationships.

- Finding explanations for deviations from common behaviours by individuals or subgroups.

Face to face interviews were the main data collection method for this study. This is because the study was qualitative in nature and interviews provided a good means of probing information.

The interviews were conducted with the aid of a semi structured interview guide with both closed and open ended questions. The interview guide served as a map for the path that was followed by the researcher when probing specific issues considered relevant to the study. Gillham (2000) recommends use of interview because of its flexibility as questions can be restructured if not understood by respondents.

The researcher developed questions for purposes of gathering information on essential areas required to be later compared with responses from other respondents or interviewees and at the same time create room for unstructured environment where the interviewee can give additional information that may have not been anticipated by the researcher. Semi-structured interviews are the most commonly used interview techniques in qualitative researches (Raudenbush, 2005; Guest, Bunce & Johnson, 2006; Wray, Markovic & Manderson 1997).

3.5.2 Documentary Sources

Data was also collected by reviewing various documentary sources based on objectives of the study aimed at gathering additional information to enrich the study. Slater (1990) argues that in qualitative research, one should not neglect existing ready-made material. The key documents reviewed included:

Judiciary strategic plan and annual operation plans-for clarity on the planning process, administration of justice, records management and court operations in terms of budgetary allocations or infrastructure, environment control and staffing.

Sustaining Judiciary Transformation Report-to establish the achievements made after the Judiciary Transformation Framework initiative and the challenges in records management and administration of justice.

Judiciary annual reports- to establish the achievements and challenges in administration of justice which hinder expeditious delivery of justice.

Survey reports and journals - to gain a deeper understanding on the current record management practices and the role of records in administration of justice in courts, challenges and previous recommendations.

ISO 15489-1:2016- to gain better understanding on the creation, control, security, access and disposition of records.

The documentary review process may be limited by the fact that some materials may be outdated and authorship of the materials may be unclear. The researcher overcame this limitation by undertaking initial review and then probing into the gathered information during the interview sessions.

3.6 Data Collection Procedure

Data collection and data analysis are simultaneous in qualitative. Data were collected through face-to-face interviews. The first step involved designing interview schedules that were used when conducting interviews. The aims, objectives and research questions of the study formed the basis of the schedules. After getting the necessary approval to undertake the study, the researcher made appointments with the various respondents. The

interviews were done at varied intervals. The interviews and data recording were done by the researcher and the interview schedule was used as a guide on questions that were asked as the personal interviews were carried out. Though some of the respondents were known to the researcher, formal introductions and the objectives of the interview were well stated to respondents to formalize the interview process.

The interviews were carried out in a flexible environment with only one question asked at a time, while probing when the researcher felt that the response was not exhaustive. The responses were recorded on the interview schedule sheets. The researcher tried to carry out the research in a friendly and courteous manner while avoiding irrelevant questions from the respondents. The interviews were mainly conducted in English and they lasted between half an hour to one hour. The interview schedule was analyzed based on the objectives of the study. The unstructured interviews allowed for freedom and flexibility.

3.7 Pre-Testing of the Research Tools

The draft interview schedule was pre-tested on a few population that were not to participate in the study that is one judge, one magistrate, two court clerks and two advocates to ascertain the following:

- That the questions are clearer

- That the interview lasts the required time

- That the questions are understood

- That the questions are not offensive or intimidating to the respondents

- To appreciate the respondents reactions to the questions

The findings of the pre-testing enabled the researcher to edit the interview schedule so as to enable the respondents have a better understanding of the questions and to respond with ease. The pre-test interview schedule results were more or less what were established by the study with very little alterations.

3.8 Reliability and Validity

Validity and reliability are important since they measure outcomes. If the data collection instruments are not valid and reliable then the results collected will always be in doubt and the findings of the study maybe challenged (Cargan, 2007). An assessment of the collected data hinges upon determining the reliability and viability of the survey instruments. Reliability refers to how consistent a research procedure or instrument is. It is actually the level of constancy demonstrated in the study. In estimating reliability of a test, one would be examining its viability as a measurement device.

Reliability is the extent to which the data collection tool, in this case the interview schedule, produces the same results on repeated trials. It is the stability of consistency of scores over time or repeated trials. Reliability refers to the consistency of the scores obtained. How consistent are they for each individual from one administration of an instrument to another and from one set of items to another, (Fraenkel and Wallen, 2000).

Thus, reliability is the degree to which a test consistently measures what is sets out to measure while at the same time yielding the same results (Babbie and Mouton, 2001).

Reliability of an instrument is confirmed when it is able to deliver consistent results time after time (Cargan, 2007). The question being asked determines the results when a retest of the dependent variables produces similar scores. Neuman (2003) is of the opinion that "reliability means dependability of consistency and that qualitative studies use variety of techniques to record such observations".

Validity is the most important idea to consider when preparing or selecting an instrument for use. Validity is defined as referring to the appropriateness, meaningfulness and usefulness of the specific inferences researcher's make based on the data they collected (Fraenkel and Wallen, 2000). Validity determines whether the research truly measures that which it was intended to measure or how truthful the results are. It is the extent to which the instrument measures what it purports to measure.

The concept of validity is described by a wide range of terms in qualitative studies. This concept is no single, fixed or a universal concept, but rather a contingent construct grounded in the process and intentions of particular research methodologies and projects (Winter, 2000). The interview schedule was pre-tested with a judge, a magistrate, court staff and advocates who were not participating in the study. This helped determined both the validity and reliability of the interview schedule. The results of the initiative were similar and thus reflected the expected output.

3.9 Data Analysis and Procedure

The process of data analysis referred to computation of certain measures along with searching the pattern of relationship that exists among data groups. The process involved editing, coding, classification and tabulation of the collected data for analysis. Data were classified into categories before analysis. The following steps were followed during the data analysis process:

Organization of Data

The process involved transcribing interviews, editing, field notes, sorting, arranging the data into various types depending on the source of information.

Creation of Categories Themes and Patterns

The researcher distinguished data from each other by establishing relationships amongst categories. Code/categories were generated both manually and using computer software. After making sense of the responses the researcher wrote notes and thoughts at this stage.

Coding Process

This is the process of organizing the materials into segments to make meaning. After making sense of some of the responses and getting meaning, the thoughts were written on the margins. After all the data was categorized, selective coding was done by grouping the categories by similarity and themes identified based on each grouping. Respective data including the numerical data that was generated was put together for analysis. Codes were used to present a particular phenomenon.

Description

The description was generated from the coding process. This involved a detailed description of information. Themes were generated from the major findings and created respective sections of the study. They represented multiple perspectives of diverse findings.

Interpretation of Data

After coding and describing the data, the researcher evaluated and analyzed the data. Meaning was derived from the formulated theories. The evaluation created usefulness of the information in regards to answering the research questions.

3.10 Ethical Considerations

Resnik (2007) defines ethics as norms for conduct that distinguish between acceptable and unacceptable behaviour. According to Shamoo and Resnik (2003) ethics can also be defined as a method, procedure, or perspective for deciding how to act and for analyzing complex problems and issues. From a research perspective, William (2005) defines ethics in terms of a code of behaviour appropriate to academics and the conduct of research. They refer to appropriateness of the research behaviour in relation to the rights of those who become the subject of the study or those affected by it.

Ethical concerns emerged as the researcher planned for the research, sought access to organizations and to individuals, collected, analyzed and reported the data. The researcher considered the ethical issues throughout the period of research and remained sensitive to the impact of the research on those whom the researcher sought help from,

who provided access and cooperation and those who were to be affected by the study results. The subjects were assured of confidentiality and that the findings were to be used purely for academic purposes.

The study observed ethical values of integrity, honesty, objectivity, confidentiality and anonymity. This was achieved through seeking respondents' consent before collecting data, reporting findings accurately and non-disclosure of names of respondents. Setting of the study and decided how to investigate the data in the report; and if required, developed strategies for further testing or confirming the qualitative data in order to prove their validity.

3.11 Chapter Summary

In summary, this chapter has discussed the research methodology applied in conducting this study. The study has elaborated on the study population, sample and sampling procedures. The study was carried out in Milimani Commercial Court within Nairobi. The study sample was obtained from the target population who included Judges, Magistrates, advocates, Executive Officers, registry staff, court clerks and members of public. The instruments that the study adopted to collect data were interviews and documentary reviews from which the researcher gathered all the relevant data that addressed the objectives of the study. Data collected were presented and analyzed using quantitative and qualitative methods in line with ethical consideration.

CHAPTER FOUR

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

4.1 Introduction

This chapter deals with data presentation, data analysis and interpretations as set out in the study. The results are presented on the role of sound records management in supporting the administration of justice at Milimani Commercial Court. The chapter is organized under the following subheadings;

- The policy framework governing records management practices;

- The effectiveness of the security measures put in place to safeguard the records;

- The adequacy of records management practices in supporting the administration of justice at Milimani Commercial Court;

- The knowledge and skills possessed by the staff in records management in supporting administration of justice;

- The challenges encountered in the management of records that impact negatively on administration of justice and the proposed measures for improvement.

This chapter also covers the demographic information, and the findings based on the objectives. The format of presentation is descriptive complimented by relevant quotes from the respondents. Tables, graphs and charts are also used for ease of understanding.

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4.2 The Policy Framework Governing Records Management Practices

The first objective of the study was to examine the policy framework that governs records management practices. The results are as shown in the subsequent sections.

4.2.1 Records Management Policy to Govern the Management of Court Records

The respondents were asked to indicate whether there was a records management policy to govern the management of court records. The results are indicated in Figure 4.1 below.
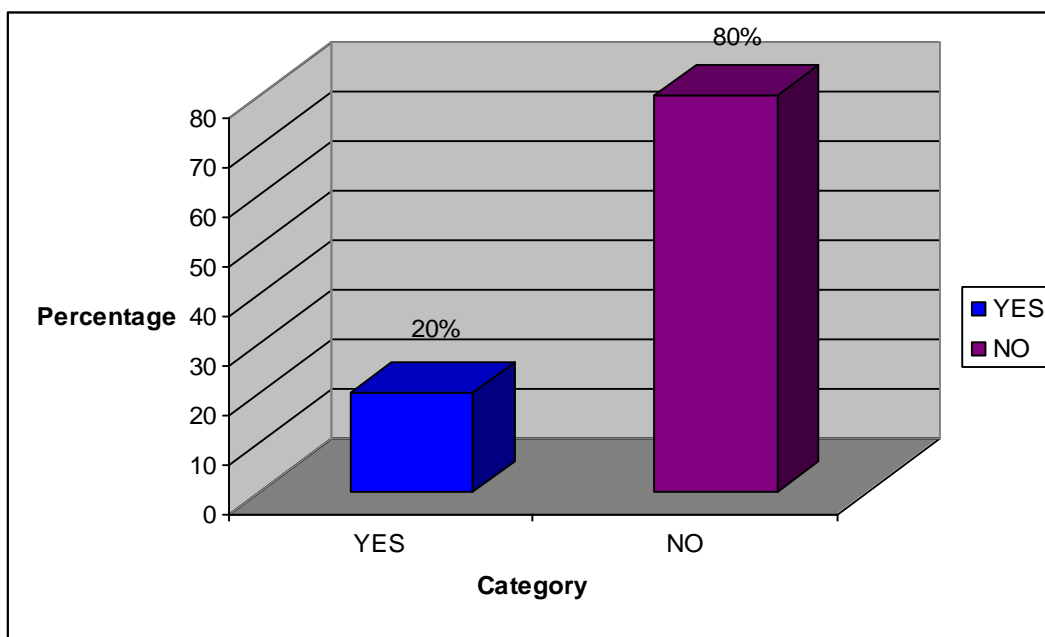
Figure 4.1: Records Management Policy Governing the Management of Court Records

The study findings in Figure 4.1 show that majority of the respondents 102 (80%) indicated that there was no records management policy to govern the management of court records. One respondent stated that *" we don't have a records management policy*

and due to this we experience frustrations in management of court records, in retrieval of records, missing files , inconsistent storage arrangements for files, misfiling of records, lack of standard practices in different registries with almost every staff having his/her own way of managing the files in their custody". The majority indicated that the policy does not exist.

The other group of respondent 25 (20%) indicated that there was a policy in place for the management of records. When probed further on what the policy stipulated they said that they had not seen the document. One of the respondents said, "*I know there is a policy in place from the way we run our activities though we need to be sensitized about the same.*"

This infers that there is no records management policy in place to facilitate the administration of justice at Milimani Commercial Court. The policy needs to be put in place and the staff be sensitized about it in-order to achieve good records management practices.

4.2.2 Type of Records Created and Maintained at Milimani Commercial Court

The respondents were asked to indicate type of records created and maintained at Milimani Commercial Court. The findings are indicated in Table 4.1 below.

Table 4.1: Clerks and Registry Staff Responses on the Type of Records Created and Maintained at Milimani Commercial Court

Type of Records	Frequency	Percent
Case files	38	30
Staff records	28	22
Cause lists and movement registers	34	27
Financial records	24	21
Total	**127**	**100**

Basing on table 4.1, the respondents revealed that the types of records created and maintained at Milimani Commercial Court are paper records. Majority of respondents 38 (30%) revealed that there were case files. They attributed this to the high rate of records creation and accumulation of records because since Milimani Court is a busy court and the only civil court in the country. Other respondents 34 (27%) indicated cause lists and file movement registers. Much as this was reported like that, fewer respondents noted staff records 28 (22%) and financial records (21%). The 27 respondents were then asked to elaborate the types of financial records created stated cash books, receipt books, cheque books, deposit slips from the banks, ledger books, vote books, imprest and payment vouchers. One respondent said *"the financial records are maintained by the court for accountability, budgeting and auditing purposes to ensure that funds are well utilized".*

4.2.3 The Format in which the Records in the Registry Currently Exist

The respondents were asked to indicate the format in which the records in the registry currently exist and how they are categorized. The findings are indicated in Table 4.2 below

Table 4.2: The Categories of Records in the Registry

Categories	Frequency	Percent
Files	30	24
Books	28	22
Manuals	23	18
Photographs	19	15
Registers	27	21
Total	**127**	**100**

As shown in table 4.2 above, the respondents indicated the format in which the records in the registry currently existed in their responses. All the respondents agreed that records were paper based. The categories of these records are files being the majority 30 (24%), books 28 (22%), registers 27 (21%) and manuals 23 (18%) According to the above table (4.2), fewer respondents 19(15%) indicated photographs. This implies that the format of records at Milimani Commercial Court was mainly paper based.

4.2.4 The Users of the Records in the Registry

The study sought to ascertain who the users of the records in the registry were. The results are indicated in Table 4.3 below.

Table 4.3: The Users of the Records in the Registry

Type of Users	Frequency	Percentage
Litigants	84	66
Magistrates	127	100
Advocates	106	83
Executive Officers	70	55
Accountants	64	50
Judges	127	100
Court clerks	102	80
Public	72	57

From the multiple responses of the respondents it can be seen from table 4.3 that all of the 127 (100%) respondents cited Judges and Magistrates as the biggest users of records in the registry. It was also revealed that advocates 106 (83%), court clerks 102 (80%), accountants 64 (50%), the public 72 (57%) and Executive officers 70 (55%) respectively were also users of the records in the registry. Judges and magistrates use the records for**:** research, hearing of cases, writing rulings and judgement, for administrative purposes, for evidential purposes and also as precedents. A member of the public was probed on why he uses the court records and he said: "*to know the position of my case, for filing purposes and to make court payments and fines*". The accountants reported that they used

these records for administrative purposes, for payments, receipting, auditing, deposits made in court and refunds to clients.

The court clerks of whom four are law students doing their pupillage stated that they used these records for research, precedents and report writing. When probed further two court clerks stated that they use the records for research to assist the judges in the cases they handle so that they write better judgements and rulings.

This implies that the records are very instrumental and play a major role in supporting the administration of justice at Milimani Commercial Court as it served a diverse population of users.

4.2.5 Existence of Manuals for the Management of Court Records

The study sought to establish whether there are records management manuals for the management of court records. The results are indicated in Figure 4.2 below.
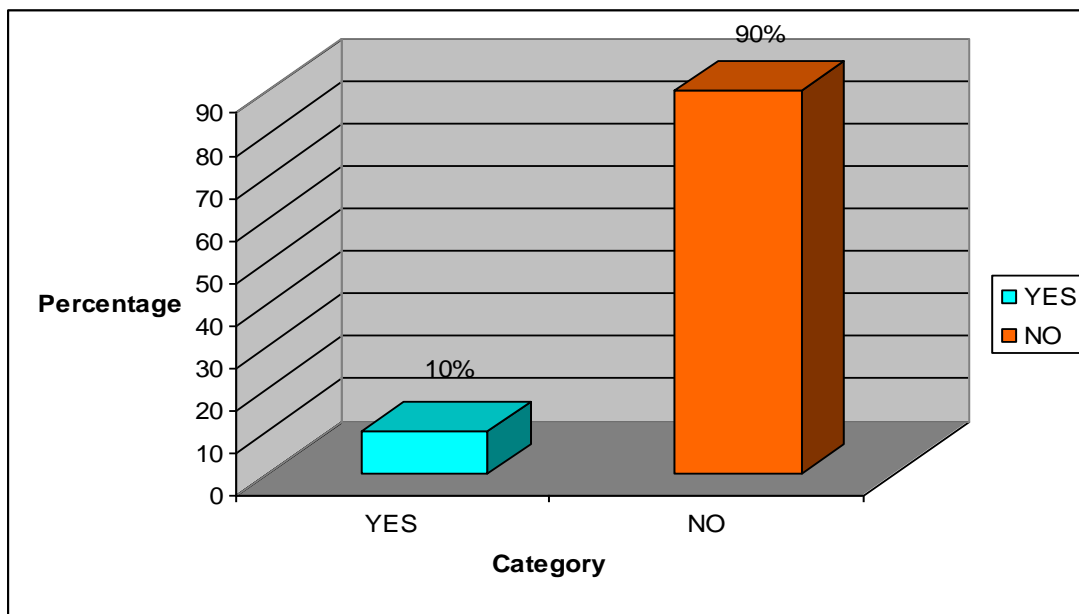
Figure 4.2: Existence of Manuals for the Management of Court Records

The majority 114 (90%) of the respondents indicated that there are no records management manuals for the management of court records. They indicated that though the records management manuals were to help the court staff and other employees to understand the records management principles applicable to the information they create and receive, and to help them manage their information in a secure and efficient manner, they were not in place. This depicts that the court had no functional records management manuals for the management of court records. The other respondents 13 (10%) said there were manuals but they could not state what was contained in them. This indicates that the registries manage their records on self-made rules with no manual to guide the registry staff.

4.2.6 Personnel Working in the Registry

The respondents were asked to indicate whether the personnel working in the registry were adequately trained to manage the records. The findings are indicated in Table 4.4 below.

Table 4.4: Personnel Working in the Registry and if they are Adequately Trained to Manage the Records

	Frequency	Percent
Degree holder	4	15
Diploma holder	6	23
Form four Certificate holder	16	62
Total	**26**	**100**

Based on the findings the respondents indicated that out of the 26 registry personnel only 4 (15%) were degree holders, out of the four 2 were trained in records management, one in law and the other in media studies. The diploma holders as cited by the respondents were 6 (23%) while the majority 16 (62%) having just the form four certificate. This indicated that majority of the staff in the registry were not trained to manage the court records. Neither have they undergone a professional training for records management they learn on the job. It was further noted with concern by the 16 (62%) respondents that there have been no efforts by the court to offer the staff training in records management despite the difficulties the registry staff are facing. One respondent remarked:

"We are suffering. We have asked for training in this area or even a consultant but none is forthcoming. I hope your study will be an eye opener to the court."

This depicts that training and development of staff was a critical component for an effective record management system in courts. For the court to function well, the respondents pointed out that they need to be trained in records management. This knowledge will help them to ensure that records are well managed, filed properly, can be retrieved easily to allow cases to proceed and be determined in time to avoid delay of justice. This is a training need that needs to be addressed and budgeted for. The court human capital required further training as only half of the staff population was adequately trained in record management.

4.2.7 Classification of the Court Records

The study sought to establish how the court records were arranged and classified. The results are indicated in Table 4.5 below:

Table 4.5: Classification of the Court Records

Classification of Records	Frequency	Percent
Alpha numerically	54	43
Alphabetically	31	24
Numerically	14	11
Chronologically	8	6
geographically	20	16
Total	**127**	**100**

The findings indicated court's records were arranged and classified alpha numerically, alphabetically, numerically, chronologically and geographically. This illustrates that the court had a working classification system as the court operated a hybrid system of record classification.

4.2.8 Retrieval Tools used in the Registry

The study sought to find out from the respondents the retrieval tools used in the registry. The results are indicated in Table 4.6 below.

Table 4.6: Retrieval Tools used in the Registry

Retrieval Tools	Frequency	Percent
Applications	65	51
Paper request	32	25
Perusal forms	30	24
Total	**127**	**100**

Based on the responses, the retrieval tools used in the registry included; paper request 32 (25%), Applications 65 (51%) and perusal forms 30 (24%).

This shows that the court had retrieval tools that were used in the registry. However, one of the respondents reported that, *"we lack modernized retrieval tools which slows down the rate of records retrieval as majority of the retrieval tools are manual based"*.

4.2.9 Efficiency of the Retrieval of the Required Records

The respondents were asked to indicate how efficient the retrieval of the required records was. The results are indicated in Figure 4.3 below.
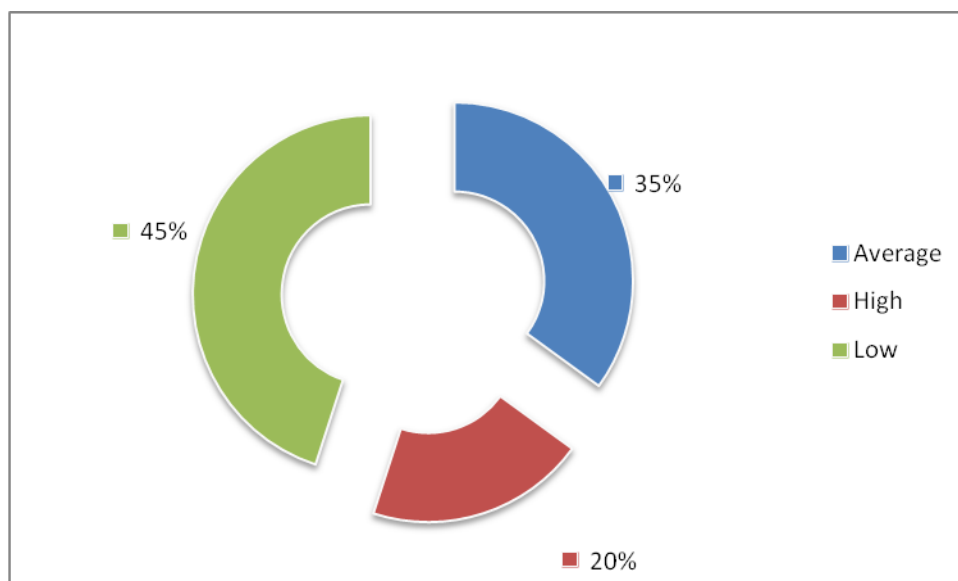
Figure 4.3: Efficiency of the Retrieval of the Required Records

According to the results, most of the respondents 57 (45%) attest that the effectiveness of retrieval of the required records was low. They attributed this to complaints from clients and lack of retrieval space. The other 45 (35%) posited it to be average, while 25 (20%) indicated that it was high. Two of the respondents said it was high because they were able to retrieve files fast because of the retrieval tools. This means that the existing retrieval tools were not effective in supporting the administration of justice as attested by the slow pace of retrieval of the required records.

4.2.10 File Tracking Methods/Procedures to ensure Records are not Misplaced

The respondents were also asked to indicate whether there were file tracking methods/procedures to ensure records are not misplaced. The findings are indicated in Figure 4.4 below.
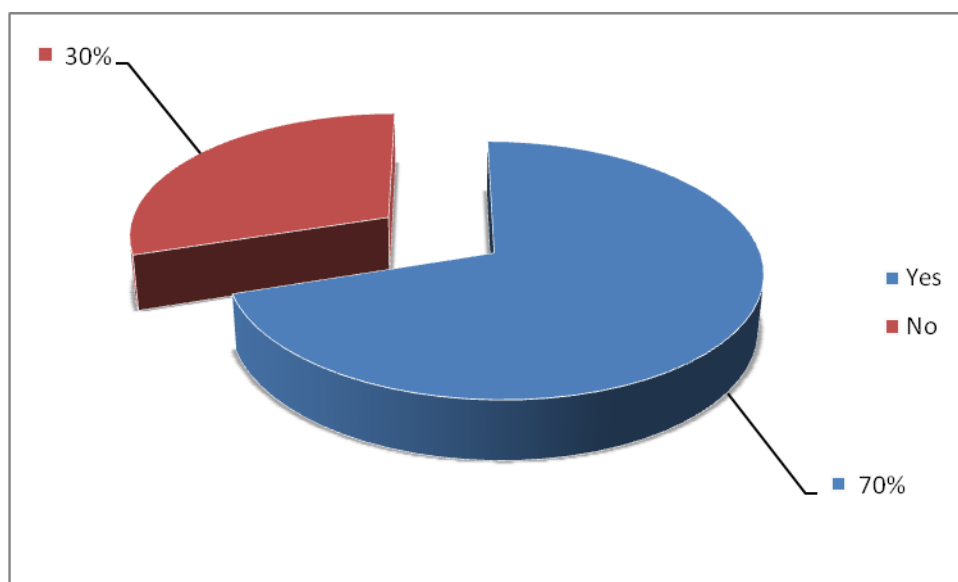
Figure 4.4: File Tracking Methods/Procedures to ensure Records are not Misplaced

The study findings in Figure 4.4 show that majority of the respondents 89 (70%) indicated that there were file tracking methods/procedures to ensure records are not misplaced or lost. The respondents were of the opinion that the tracking methods were used to trace and show the location of files. The other respondents 38 (30%) stated that there were no file tracking/procedures to ensure no records were misplaced or lost. According to them if the tracking procedures were in place there would be no issues of lost files or complaints of lost or missing files. They pointed out that lack of the file tracking methods placed the records at risk.

This illustrates that the court had a file tracking methods/procedures to ensure records are not misplaced/lost in the registries. However, the file tracking methods/procedures were not quite efficient as tracking of files was mainly done through the use of manual movement registers. On further probing the respondents revealed that though the registers are there, some are missing due to poor records management. One respondent remarked; *"in my registry the movement registers are torn beyond repair, others have missing pages making it hard for me to track missing files"*. She noted further that there has to be accountability in the use of the registers and also the quality of the movement registers should be looked into since the registers are considered to be permanent records.

4.2.11 The Equipment's used by the Registry for Managing Court Records

The study sought to identify the type of equipments that the registry has at its disposal.

Table 4.7: The Equipments used by the Registry for Managing Court Records

	Frequency	**Percent**
Metal cabinets	22	17
Shelves and pigeons holes	38	30
Mobile Shelving	10	8
Metal Racks	57	45
Total	**127**	**100**

From the findings, registries have different types of storage equipments at their disposal for managing court records which included; Metal racks 57 (45%), shelves and pigeons 38 (30%), metal cabinets 22 (17%), mobile shelving 10 (8%). The respondents noted that though the equipments were supposed to protect the records from theft, dust, wear and tear, they have left the records in poor state due to their poor quality. One of the respondents said *"as a court we need quality storage equipment that is tailor-made for our records without compromising the integrity of our records most of which are public records. The storage equipments we are currently using are too old and are also not ideal for our records".* This depicts that the equipments for managing court records were metal racks, shelves and pigeons, metal cabinets and mobile shelving. This is a clear indication that the storage equipments in use at Milimani Commercial Court are not ideal for its records and hence the court need to procure the right kind of storage equipment that is tailor-made for the court records.

4.2.12 Adequacy of the Storage Equipment in the Protection of Court Records

The respondents were requested to indicate how adequate the storage equipment was in the protection of court records. The results are indicated in Table 4.8 below.

Table 4.8: Adequacy of the Storage Equipment in the Protection of Court Records

	Frequency	**Percent**
Average	47	37
High	25	20
Low	55	43
Total	**127**	**100**

According to the results, most of the respondents 55 (43%) attested that the adequacy of the storage equipment in the protection of court records was low, 47 (37%) posited assessed it to be average while 25 (20%) respondents indicated that it was high. When further probed on the risks of poor storage the respondents listed the risks of poor storage as:

- Being unable to find records when they are required.

- Records being damaged by poorly designed or maintained storage facilities.

- Loss of records in a disaster.

- Theft or misuse of records which are not stored securely.

- Gradual damage to records caused by poorly controlled storage conditions, such as, excessive light, dust and dirt, dampness or heat.

- Substantial costs to repair or reconstruct records which are expensive to the court.

- Potential for damage due to excess handling or mishandling.

From the majority the storage equipment used in the protection of court records was low hence not adequate. This put not only the records at a risk but also jeopardized the role of records in administering justice to the court users at Milimani Commercial Court. There is a need therefore to improve on the same to ensure that the records are kept secure.

4.2.13 Adequacy of the Space allocated for the Court Records

The respondents were requested to indicate the adequacy of the space allocated for the court records. The findings are recorded in Table 4.9 below.

Table 4.9: Adequacy of the Space allocated for the Court Records

	Frequency	**Percent**
Average	45	35
Adequate	25	20
Inadequate	57	45
Total	**127**	**100**

According to the results, most of the respondents 57 (45%) indicated that the space allocated for the court records was inadequate, 45 (35%) respondents found it to be average while 25 (20%) respondents indicated that it was adequate.

This illustrates that the space allocated for the court records was not adequate and would require up -grading and be modernized to create more space. The respondents pointed out that although Milimani Commercial Court is a very busy court with a high rate of records accumulation since over 100 files are created daily, the management had not looked into the issue of creating more storage space for the records. This is a challenge to both the administration and the staff. One respondent stated that; *the lack of periodical appraisal and disposal of records led to accumulation of unwanted files in the registries taking up unnecessary space".*

The respondents also complained that due to lack of space they were forced to store some records on top of shelves and cabinets. Others said they kept their records on the floors since they had no alternative and as a result of this, most of these records are dirty, others are badly torn and some have been destroyed by the frequent flooding due to the courts poor drainage system. This to them posed a risk because the records could be stolen, misplaced and destroyed beyond repair.

4.2.14 Records Centre for the Storage of Semi-Current Records

The respondents were further asked to indicate whether they had a records centre for the storage of semi-current records. The findings are indicated in Figure 4.5 below.
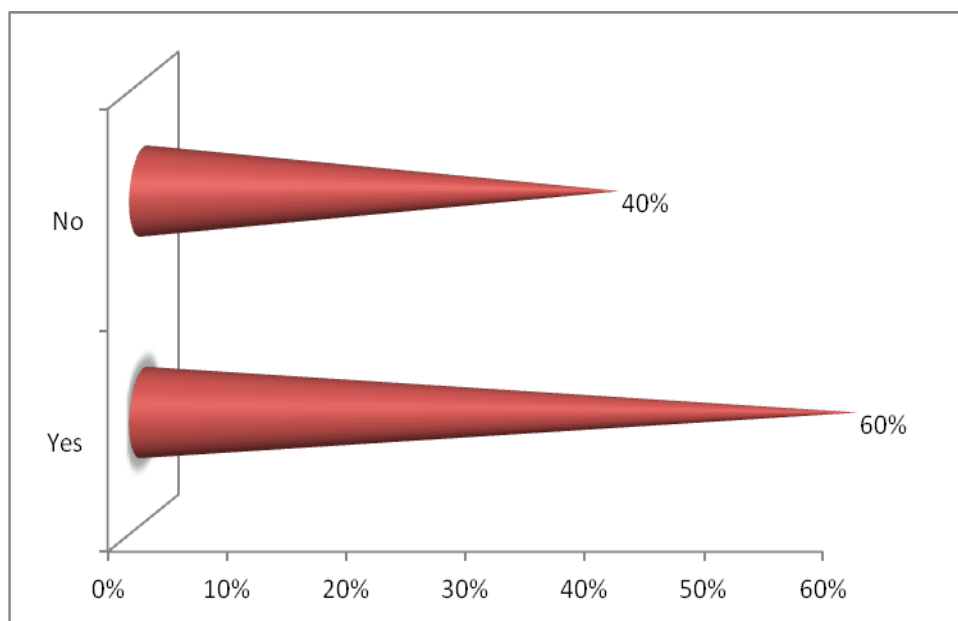
Figure 4.5: Records Centre for the Storage of Semi-Current Records

The results in Figure 4.5 show that majority of the respondents 76 (60%) indicated that the court had a records centre for the storage of in-active records while 51 (40%) attested to court not having a centre for the storage of semi-current records. Majority of the respondents stated that the records centre is already full and it can't accommodate more records. Therefore the court has to either expand the existing one or acquire a new building. This implied that the Milimani court has to renovate or expand its existing records centre to be able to accommodate more records so as to create more storage space in the registries.

4.3 The Effectiveness of the Security measures put in place to Safeguard the Records

The second objective of the study was to determine the effectiveness of the security measures put in place to safeguard the records. The findings are as shown in the subsequent sections. \

4.3.1 Security Measures put in place to Protect the Records

The respondents were asked to indicate the security measures put in place to protect the records. The results of the findings are indicated in Table 4.10 below.

Table 4.10: Security Measures put in place to protect the Records

	Frequency	Percent
File Movement book registers	36	28
Retrieval of files being done by specified persons	20	16
Registry is locked	36	28
Sensitive files kept in a locked strong room	11	9
No unauthorized access	24	19
Total	**127**	**100**

Table 4.10 shows that there are security measures put in place to protect the records. Majority of the respondents 36 (28%) indicated the use of file movement book registers and locking of the registry when not in use as the major security measures in place. The other 24 (19%) respondents cited no unauthorized access, yet 20 (16%) respondents cited retrieval of files being done by specified persons and 11 (9%) respondents said the sensitive files are kept in a locked strong room. The respondents also mentioned that there are CCTV cameras in the registries as a security measure. The keys to the main registries are handled by one person.

The findings indicate that the court had adopted various security measures to protect the records from unauthorized access and theft. The respondents also noted that there was no security policy in place.

4.3.2 Efficiency of Security Measures

The study sought to ascertain whether the security measures were effective. The results are indicated in Figure 4.6 below.
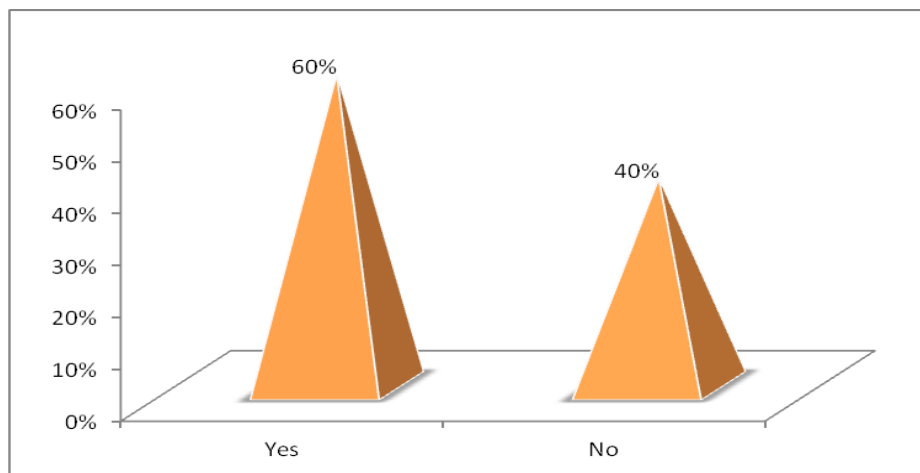
Figure 4.6: Efficiency of Security Measure

The results in Figure 4.6 show that majority of the respondents 76 (60%) indicated that the security measures were effective while 51 (40%) attested to court not having effective security measures to protect the records. They cited cases of missing files being an issue that had become a thorn in the flesh for the top management. They stated that records are not sufficiently protected and that they need to be protected from improper access, accidental loss, theft, damage or unwanted destruction.

The respondents were asked to identify potential disasters that are likely to affect their records, and they identified fire, water and theft as the potential disasters. The respondents cited the use of security guards, CCTV cameras in some registries, fire extinguishers and locking of registries as the measures they used to protect the records.

Even though there are fire extinguishers in the registries, the study established that the officers are not trained in using them. The court also does not have file back-ups to secure their records.

This shows that the various security measures to protect the records adopted by the court were moderately effective which compromised the role of sound records management in supporting the administration of justice at Milimani court . There is need to upgrade through computerization of the systems and having CCTV surveillance cameras in all the registries and offices. The staff need to be trained on using the fire extinguishers. All the respondents agreed that there is a need to have a policy on security of records.

4.4 The Adequacy of the Current Records Management Practices in Supporting the Administration of Justice at Milimani Commercial Court

The third objective of the study was to establish the adequacy of the current records management practices in supporting administration of justice at Milimani Commercial Court. The findings are as shown in the subsequent sections.

4.4.1 Presentation of Court Records to Judicial Officers

The study sought to establish whether the court records were presented to judicial officers in time. The findings are indicated in Figure 4.7 below.

Figure 4.7: Presentation of Court Records to Judicial Officers

The majority 108 (85%) of the respondents indicated that the court records were presented to judicial officers in time while 19 (15%) of the respondents felt that the court records were not presented to judicial officers in time they attested this to the delays in finalization of cases.

These findings mean that the staff applied good records management practices in supporting administration of justice at Milimani Commercial Court. This is reflected by the timely presentation of records to the judicial officers.

4.4.2 The Court having a Case Management System

The respondents were asked to indicate whether the court has a case management system. The findings are indicated in Table 4.11 below.

Table 4.11: The Court having a case Management System

	Frequency	**Percent**
Yes	58	46
No	69	54
Total	**127**	**100**

The majority 69 (54%) of the respondents indicated that the court has no case management system while 58 (46%) said that the court does have a case management system in place. When probed further if the system was operational the 58(54%) respondents said it was not yet operational.

Therefore court has no operational case management system in place. The adequacy of the current records management practices in supporting administration of justice at Milimani Commercial Court relies on the functionality of the case management system. The respondents further explained that they are not aware what the case management system is supposed to do. Therefore they need to be trained and sensitized on the same.

4.4.3 Access of Record by the Clients

The study sought to establish how the clients accessed their records in court. All (100%) of the respondents unanimously indicated that clients accessed their records through formal requests application. The respondents reported that the clients bring their applications and present them to the registry for action. This depicts that the record

management was mainly manual based as clients accessed their records through requisition and they paid for the services.

4.4.4 Measures put in place to preserve the Court Records

The study sought to establish what measures have been put in place to preserve the court records. The findings are indicated in Table 4.12 below.

Table 4.12: Measures put in Place to Preserve the Court Records

Preservation Measures put in place	Frequency	Percent
Archives	37	29
Proper storage	31	24
Constant repair of files	11	9
Maintaining cleanliness via dusting of files	7	6
Strict rules of admission	41	32
Total	**127**	**100**

Based on response, majority of the respondents 41 (32%) revealed strict rules of admission as one of the key measures put in place to preserve the court records to ensure that no unauthorized staff have access to the records. Thirty seven (29%) respondents indicated the use of the archive to preserve the records, proper storage of records was cited by 31(24%) respondents, constant repair of files was noted by 11 (9%) respondents while fewer respondents 7 (6%) indicated maintaining cleanliness via dusting of files.

The 11 (9%) respondents said that the constant repair of these records was to preserve their integrity and prevent wear and tear.

These were however not enough as noted by one respondent because most of the court files are still very dirty and dusty and in poor conditions. A lot has to be done as far as preservation of court records is concerned. Another one said he needed training to be able to know how to preserve these records.

4.4.5 The Appropriateness of Physical Environment in the Registry for the Management of Records

The study sought to establish whether the physical environment in the registry is appropriate for the management of records. The findings are indicated in Figure 4.8 below.
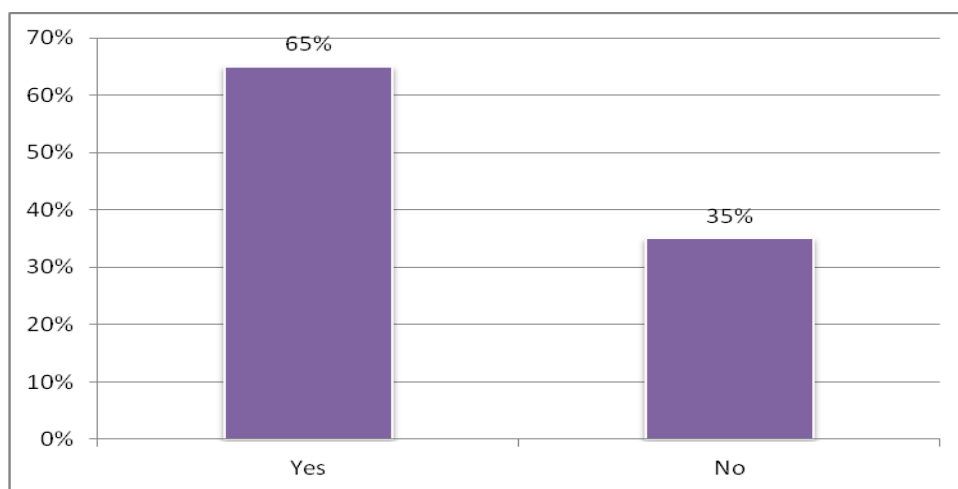
Figure 4.8: Appropriateness of Physical Environment in the Registry for the Management of Records

The majority 83 (65%) of the respondents indicated that the physical environment in the registry was appropriate for the management of records. They said the registry has windows which are opened daily to allow fresh air. The lighting in the registry is good because they use fluorescent light which does not harm the records. Majority of the respondents also noted that cooking is not allowed in the registries. Only 44 (35%) of the respondents indicated that the physical environment in the registry was not appropriate for the management of records. They attributed this to lack of enough storage space which has led to accumulation of files everywhere. The files are so congested on the shelves making filing difficult and an uphill task.

This implies that though the physical environment in the registry was appropriate for the management of records, however it was noted that there was a lot of congestion and dust in the record storage areas.

4.4.6 The Potential Disasters likely to affect the Court Records

The respondents were asked to indicate the potential disasters likely to affect the court records. The findings are indicated in Table 4.13 below.

Table 4.13: Potential Disasters likely to Affect the Court Records

Potential Disasters	Frequency	Percent
Rain and floods	64	50
Fire	29	23
Bombing	14	11
Theft of records	20	16
Total	**127**	**100**

From the findings, the respondents said that the court was not immune to disasters and there are potential disasters likely to affect the court records. Majority of the respondents 64 (50%) indicated rain and floods as potential disasters. Other respondents 29 (23%) pointed out fire as a disaster, while 20 (16%) respondents revealed that theft of records was also a potential disaster which would give the court a bad image, fewer respondents 14 (11%) indicated bombing too as a potential disaster in this era of terrorism thus the need to protect the records from these disasters.

Majority of respondents 64 (50%) pointed out rain and floods to be potential disaster due to the poor drainage system which has from time to time caused the basement registries to be flooded and hence records are soaked in water. This depicts that there were potential disasters likely to affect the court records that would require adoption of strategic measures to mitigate and cope with disasters.

4.4.7 Measures taken to Protect the Records

The respondents were asked to indicate the measures taken to protect the records. The findings of the multiple responses are indicated in Table 4.14 below.

Table 4.14: Measures taken to Protect the Records

	Frequency	percentage
Fire extinguishers and smoke detectors to cater for fire disasters	92	72
Use of fire proof metal cabinet and shelves	55	43
Storing records in soft copy	25	20
Use of personnel to monitor possible disasters	66	52
Locking the registry and Cctv cameras	92	72
Use of strong rooms for sensitive files	30	24
Provision of security by security guards	25	20

According to the results on table 4.14 on the measures taken to protect the records, majority of the respondents 92 (72%) revealed that fire extinguishers and smoke detectors were put in place to cater for fire disasters, the registries had installed CCTV cameras for security and they were kept under lock and key when not in use to protect records from theft or unauthorized access. The use of fire proof metal cabinet and shelves as was cited by 55 (43%) respondents, while the use of strong rooms for sensitive files was revealed by 30 (24%) respondents. Sixty six (52%) respondents cited the use of personnel to monitor possible disasters. The provision of tight security by security guards was mentioned by 25 (20%) respondents and lastly 25 (20%) respondents indicated storing records in soft copy.

This depicts that the court had put in place measures to not only protect the records but also to mitigate and cope with imminent disasters that were likely to negatively affect the role of records in the administration of justice and service delivery at Milimani Commercial Court.

4.5 The Knowledge and Skills in Records Management Possessed by the Staff

The study sought to find out whether the staff possessed the right knowledge and skills in records management and service delivery. From the findings, the respondents unanimously agreed that the majority of the staff did not possess the right knowledge and skills in records management and service delivery. This was because only two members of staff had a degree in records management and two had a law degree. They said they required regular training to remain well horned in their work. The court did not provide training opportunities regularly which reduced the productivity of the staff. The staff did recommend in-house training on records management so that they can be effective in their work.

4.6 The Records Management Challenges that have a Negative Impact on Administration of Justice

The fifth objective of the study was to identify the challenges encountered in the management of records that impact negatively on administration of justice and propose measures for improvement. The findings are as shown in the subsequent sections.

4.6.1 Challenges Staff Face in Administration of Justice

The respondents were asked to indicate the challenges that the staff face in administration of justice. The findings of the multiple responses are indicated in Table 4.15 below.

Table 4.15: Challenges Staff Face in Administration of Justice

Challenges	Frequency	Percentage
Poor remuneration of staff	89	70
Inadequate storage space	103	81
Inadequate training	80	63
Inadequate staffing in record management	75	59
Corruption	40	31
Poor quality filling cabinets and shelves	74	58
Slow adoption of modern technology in record management	110	87

Table 4.15 shows the challenges that the staff face in administration of justice. Majority of the respondents 110 (87%) indicated that slow adoption of modern technology in record management as a big challenge that affected proper management of records and administration of justice. The respondents attributed this to lack of training in IT and since most of the work done is manual, there was little use of computers. The 103 (81%) respondents said storage space was a major issue at Milimani. There is no space to store the new files forcing the staff to store records everywhere and anywhere there is space. Inadequate training was cited by 80 (63%) respondents who revealed that they needed to be trained in-order for them to manage the records properly. Other respondents 75 (59%)

cited inadequate staffing in record management area, while 89 (70%) respondents pointed out poor remuneration of staff as a challenge. The other challenge indicated by the 74 (58%) respondents was poor quality filling cabinets and shelves and lastly corruption pointed out by 40 (31%) respondents. This illustrates that the court had many operational challenges that negatively affected the staffs' efficiency in administration of justice.

4.6.2 The Records Management Challenges that have a Negative Impact on Administration of Justice

The respondents were asked to indicate the record management challenges that have a negative impact on administration of justice. The findings are indicated in Table 4.16 below

Table 4.16: Record Management Challenges that have a Negative Impact on Administration of Justice

Records Management Challenges	Frequency	Percentage
Poor remuneration of staff	83	65
Inadequate storage space	64	50
Inadequate training	90	70
Inadequate staffing in record management	75	59
Corruption	30	24
Poor quality filling cabinets and shelves	60	47
Slow adoption of modern technology in record management	105	83
Staff complacency	60	47
Misfiling due to human error	50	39
Lack of periodical appraisal of records	20	16

According to the multiple responses, the record management challenges that impacted negatively on administration of justice included; slow adoption of modern technology in record management revealed by majority of the respondents 105 (83%), inadequate storage space was cited by 64 (50%) respondents and 90 (70%) respondents indicated inadequate training of staff as a records management challenge. The other 75 (59%) respondents noted inadequate staffing in record management, poor remuneration of staff was a challenge that demoralized the staff and made them complacent this was noted by 83 (65%) and 60 (47%) respondents respectively. The rest of the respondents cited poor

quality filling cabinets and shelves 60 (47%), corruption by 30 (24%) respondents and misfiling by 50 (39%) respondents. A few respondents who were 20 (16%) mentioned lack of periodical appraisal of record as a setback that had a negative impact on service delivery to clients. This depicts that the quality of services offered in the Milimani Commercial Court was highly compromised by the challenges facing the record management practices and unless the challenges were addressed then the role of records to support administration of justice was at stake.

4.6.3 Proposed Measures for Improvement of Records Management at Milimani Commercial Court to Support Administration of Justice

The respondents were asked to propose measures for improvement of records management at Milimani Commercial Court to support administration of justice. The findings are as shown in the subsequent sections.

4.6.4 Measures to Overcome the Record Management Challenges

The respondents were asked to indicate the measures that could be adopted to overcome the record management challenges. The findings are indicated in Table 4.17 below.

Table 4.17: Measures to Overcome the Record Management Challenges

	Frequency	Percentage
Improved remuneration of staff	85	67
Creation of adequate storage space	67	53
Regular staff training	58	46
Recruitment of additional staff	45	35
Prosecution of corrupt staff	25	20
Purchase of good quality filling cabinets and shelves	70	55
Adoption of modern technology in record management	52	41
Dismissal of complacent staff	20	16
Regular updates of the records to correct misfiling due to human error	28	22
Strict handling of files to reduce tampering of information	40	31

Table 4.17 indicates that the measures that could be adopted to overcome the record management challenges as cited by the various multiple responses of the respondents are namely; creation of adequate storage space 67 (53%) respondents, improved remuneration of staff 85 (67%) respondents, regular staff training 58 (46%) respondents, adoption of modern technology in record management mentioned by 52 (41%) respondents, purchase of good quality filling cabinets and shelves was agreed by 70 (55%) respondents and recruitment of additional staff was proposed by 45 (35%) respondents. A number of 40 (31%) respondents stated that strict handling of files to

reduce tampering of information should be enforced to ensure accountability of the records by the staff. Prosecution of corrupt staff was pointed out by the 25 (20%) respondents and dismissal of complacent staff by 20 (16%) respondents and lastly 28 (22%) respondents indicated that regular updates of the records would correct the frequent misfiling due to human error.

This depicts that the Milimani Commercial Court needs to adopt various measures to improve its records management so as to support the administration of justice. The measures to improve its records management includes; creation of adequate storage space through digitization, improved remuneration of staff, regular staff training, adoption of modern technology in record management, purchase of good quality filling cabinets and shelves, recruitment of additional staff, strict handling of files to reduce tampering of information, prosecution of corrupt staff, dismissal of complacent staff and regular updates of the records to correct misfiling due to human error.

4.7.5 The Role of Staff in Improving Records Management and Enhancing Administration of Justice

The study sought to establish what the staff could do to improve records management and enhance administration of justice. From the findings it was observed that majority of the respondents 75 (59%) revealed that adhering to the right code of conduct at work could improve records management and enhance administration of justice. They indicated that this will in turn promote the quality service offered to the clients. A total of 72 (57) respondents indicated that by embracing positive attitude at work the staff would improve on records management and administration of justice leading to provision of quality

service to clients. The other 65 (51%) respondents noted that the staff needed to embrace team spirit and cooperation to improve records management, and the rest of the 50 (39%) respondents stated that the staff needed to be more vigilant and comprehensive in their duties.

This illustrates that human resource capital was a critical component of the records management system required in the administration of justice at Milimani Commercial Court. Optimization of the human resource capital would be through; staff adherence to the right code of conduct at work, staff embracing positive attitude and teamwork at work.

4.8 Chapter Summary

This chapter analysed and interpreted the data that were collected. The findings in this chapter are significant since they bring about an understanding of role of records management in supporting the administration of justice at Milimani Commercial Court. The study established that there is no records management policy governing records management practices and that the court records are at a risk since the security measures put in place to safeguard the records are not effective. The staff, in charge of records management, do not possess the necessary knowledge and skills and therefore the records are managed poorly. The staff recommended that they be trained in records management. There were challenges which were encountered in the management of records which were highlighted by the respondents and they had a negative impact on justice delivery, which need to be addressed. Proper records management will ensure that records support the court in administration of justice.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMENDATIONS

5.1 Introduction

This chapter presents summary of findings, conclusion and recommendations of the study in line with the research questions of the study. The research sought to establish the role of records management in supporting the administration of justice at Milimani Commercial Courts.

5.2 Summary of Research Findings

This section provides a summary of the research findings based on the research questions that were formulated by the study. The study sought to find answers to the following research questions.

5.2.1 How Adequate is the Policy Framework Governing Records Management Practices at Milimani Commercial Court?

There is no records management policy to govern the management of court records. Due to the lack of a policy, the staff experienced frustrations in retrieval of records. As a result a lot of time was wasted searching for missing files and cases of lost and misplacement files were quite common. There were also challenges of inconsistent storage arrangements for files leading to misfiling of records, lack of standard practices in different registries with almost every staff having his/her own way of managing the files in their custody. Majority of the respondents (80%) indicated that the policy does not exist. Accountability for proper management of the court records could therefore not be

enforced leading to inefficiencies in creation, filing, control and access necessary in facilitating administration of justice.

The type of records created and maintained at Milimani Commercial Court were; case files, staff records, cause lists, movement registers and financial records. This depicts that Milimani Commercial Court has diverse types of records created and maintained that would require a robust record management.

The format in which the records in the registry currently exist is paper and they are categorized; files, photographs, books, manuals and registers respectively. Without a records management policy in place, management of these records becomes a big challenge to the court.

Milimani Commercial Court has no records management manuals for the management of court records. Out of the 26 registry staff, 16 (62%) have no formal training nor are trained to manage the records. The court human capital requires further training

The court has a working classification system and that the court records were arranged and classified according to years when cases are filed, alphabetically, alpha numerically, numerically and chronologically.

The retrieval tools used at Milimani Commercial Court to retrieve files are manual based. There are file tracking methods/procedures to ensure records are not misplaced. This is done through the use of file movement registers.

The equipment that the registry has at its disposal for managing court records are metal racks, shelves and pigeons, metal cabinets, mobile shelving respectively. The storage equipment and space for the court records were limited leading to storage and retrieval problems hampering the timely availability of these records in meeting the present and future needs of the clients. The court has a records centre for the storage of semi-current records.

5.2.2 How Effective are the Security Measures put in Place to Safeguard the Records?

Milimani Commercial Court has put in place security measures to protect the records from unauthorized access, theft and leakage of information. The security measures put in place include: use of file movement register, retrieval of files being done by specified persons, use of a strong room for sensitive files, no unauthorized access, and locking of the registry when not in use.

The security measures put in place are not sufficient enough to safeguard the records. This compromises the role of records management in supporting the administration of justice to the clients leading to undue delays. There is no security policy to address the security of all the records in the court.

5.2.3 How Adequate are the Records Management Practices in Supporting the Administration of Justice?

The court records were presented to judicial officers in time to enable them hear and determine cases faster. The staff applied good records management practices which were aimed at supporting the administration of justice at Milimani Commercial Court. This was reflected by the timely presentation of the records to the judicial officers.

Milimani Commercial Court has no case management system in place. Clients access their records through formal requests application. An indication that the records management system is mainly manual based as clients access their records through requisition.

Milimani Commercial Court has put in place measures to preserve the court records namely; strict rules of admission, proper storage, archives, constant repair of files, maintaining cleanliness via dusting of files respectively.

Though the physical environment in the registry is appropriate for the management of records, however the registries are congested and they are full of dust. There are potential disasters likely to affect the court records namely; fire, rain, theft of records, bombing respectively.

Milimani Commercial Court has records management practices in place to mitigate and cope with imminent disaster that are likely to negatively affect the records in the administration of justice such as, fire extinguishers, smoke detectors, locking the registry,

use of fire proof metal cabinet and shelves, use of strong rooms for sensitive files, provision of tight security by security guards, storing records in soft copy and use of personnel to monitor possible disasters. Yet with all these the court still needs to adopt strategic measures to mitigate and cope with disasters. The staff should also be trained on how to use some of the fire equipment.

5.2.4 What kind of Knowledge and Skills In Records Management do the Staff Posses?

There are only four staff who are degree holders out of which two are trained in records and the other two in law. There are six who are diploma holders but majority of the staff sixteen in number are not professionals neither are they trained in the area of records and archives management. Hence they don't possess the right knowledge and skills in the area of records management and this affects administration of justice. This registry staffs lack the required training to manage the court records since there is no training programme on records management. They learn on the job. The court does not provide training opportunities regularly which reduces the productivity of the staff.

5.2.5 What are the Challenges Encountered in the Management of Records that Impact Negatively on Administration of Justice and what Measures can be proposed for Improvement?

The challenges that the staffs encounters in the administration of justice include; slow adoption of modern technology in record management, inadequate storage space, inadequate training, inadequate staffing in record management, poor remuneration of staff, poor quality filling cabinets and shelves and corruption respectively. The court has

many operational challenges that negatively affect the staffs' efficiency in administration of justice.

The other challenges that impact negatively on administration of justice at Milimani Court include; corruption, staff complacency, misfiling due to human error and competition among advocates respectively. The quality of service offered in the Milimani Commercial Court is highly compromised by the challenges facing the records management.

Milimani Commercial Court needs to adopt various measures to improve its records management practices so as to support administration of justice and service delivery. The measures to improve its records management includes; creation of adequate storage space, improved remuneration of staff, regular staff training and adoption of modern technology in records management.

Milimani Commercial Court needs to purchase good quality filling cabinets and shelves, recruit additional staff, implement rules on strict handling of files to reduce tampering with information, prosecute corrupt staff, dismiss complacent staff and regularly update the records to correct misfiling due to human error.

The staff can improve records management and enhance administration of justice by; adhering to the right code of conduct at work, embracing positive attitude at work, embracing team spirit and cooperation, being more vigilant and comprehensive in their duties. Human resource capital is a critical component of the records management system

required in the administration of justice and service delivery at Milimani Commercial Court.

5.3 Conclusion

Milimani Commercial court is a very busy court which generates a lot of records. These records are very critical to the running of the court and hence they must be well managed and protected. Cook (1999) argues that good records management begins with establishing policies, procedures and priorities before records are even created. However the court does not have a records management policy to manage its records. Wamukoya (2007) points out that bad records management is compounded by a number of factors such as the lack of national policy on records management, lack of records management standards, lack of records management guides/manuals, and lack of trained staff in records management who should provide guidance or assistance to institutions.

Griffin (2003) observes that in many governments, policies and guidance for managing the records of government are often non-existent and the legislative and regulatory framework is often weak or out-dated. The lack of a records management policy has led to the staff experiencing difficulties and inefficiencies when carrying out their duties. From the findings of the study, it can be concluded that the policy framework that is supposed to coordinate and guide the implementation of proper records management is however lacking.

Records management manuals are very instrumental in supporting the administration of justice at Milimani Commercial Court as it serves a diverse population of users. In order

for users to get maximum benefit from records management services, organizations rely on records management manuals to increase the efficiency of the records management unit. Ricks et al. (1992) define a records management manual as "a guide to the functioning of records management systems. Information on the who, what, when and how of the records management system is provided in the manual". Ricks et al. (1992), further assert that a record management manual is useful in: standardizing procedures, establishing responsibility, assisting in employee training; and. providing for updates of policies and procedures. Mnjama (1996) noted that the presence of a registry manual is vital to the success of registry operations. It is therefore crucial that registries be in possession of a well defined document that clearly articulates their responsibilities. That is certainly one of the ways of cultivating sound records management practices which subsequently lead to effective service delivery. With the help of a registry procedures manual in public registries, it becomes relatively easy for government departments to make records available to the right person, at the right time and at the least possible cost (National Archives of Scotland, 2003). However the court has no functional records management manual for the management of court records.

Training and development of staff is a critical component of an effective record management system in courts. Kemoni and Ngulube (2008) attributed the bad state of records management in institutions to a general neglect of registries in most government institutions, a lack of support from senior officers, an absence of records management committees, lack of training opportunities for registry staff and inadequate staffing. Burns, Ferris and Liatsopoulos (2009) link the problem of poor staffing and inappropriate

training in organisations to lack of money or inadequate funding. Most of the staff working in the registries are not trained in records management. On the other hand Tella, Ayeni, and Popoola (2007) noted that staff training was an indispensable strategy for motivating workers. It can thus be concluded that the court human capital requires further training as only half of the staff population is adequately trained in record management.

The retrieval tools lack modernization which slows down the rate of record retrieval. The file tracking methods/procedures were not fully operational. The study revealed that tracking was mainly done through the use of movement of registers. Effective records management is essential because of the large volume of records passing through a typical court system, records sensitivity and time pressure on courts. Griffin and Roper (1999) propose that in order to improve case file tracking systems in institutions basic records tracking tools such as file location cards, file movement sheets, file transfer slips, and records census forms should be used.

The space and storage equipments are not adequate and secure for the records. Parker (1999) states that facilities for active records need to provide enough storage space and protect the records from physical damage. The author mentions that in an organization there must be enough space to meet the current needs and provide some room for records growth. Twinning and Quick (1994) mentioned that institutions in many African countries have a serious problem of storage due to high costs and unfavorable physical conditions. Twinning and Quick (1994) argue that these problems are caused by the increases in the volume of records produced and lack of storage as well as preserving

records for a long time. According to IRMT (2002), magistrate courts need physical infrastructure for court records. These authors mention that magistrate's courts need to have storages to deal with the case load of case records. They further argued that the storage for keeping court records must have enough space to accommodate equipment used to keep records. They further mention that proper records management requires appropriate environmental conditions and physical security.

Many institutions in Africa are said to have serious problems of storage in relation to costs, space, physical conditions or accessibility. It is also argued that these problems are worsened by increases in the volume of records produced, storing records in inappropriately places and preserving records for far too long (Twining and Quick (1994), Mnjama (2003). Mnjama (2003) attributes some of the poor state of records management keeping in Kenya to lack of adequate storage facilities. From the findings of the study we can conclude that the records management infrastructure needs to be looked into for the court to manage its records professionally and effectively to avoid records related risks.

The study findings revealed that the court has adopted various security measures to protect the records. According to Parker (1999), security of records is important and not everyone should have access to records. He further mentions that records are important because of the information they contain thus, one of the major aspects of organization is to safeguard records from damage and destruction. Shephered and Yeo (2003) point out that organizational records need to be protected against loss or temporary misplacement.

They argue that to ensure their integrity, appropriate measures must be also taken to protect them from unauthorized alteration. The various security measures put in place to protect the records are moderately effective which compromises the role of records management in supporting the administration of justice. This is because there are still issues of missing files, lost files, and theft. According to Motsaathebe and Mnjama (2007) court records must be protected from all hazards, improper access, accidental loss, theft, damage and unwanted destruction. They further mention that there are some security measures that are used to protect court records which include fire detectors, fire extinguishers, fire alarms and use of security guards. Ellis (1993) finds that a supervised entry into a building is another way of ensuring security of records in a building. A record of any one entering or leaving the building should be maintained at all times and should be available at the entrance. Adequate security procedures and systems need be provided to prevent loss, theft or destruction of court records. The court has no policy on security of records. It can be concluded from these findings that the security measures put in place to safeguard the records need to be enhanced. There is need to have a security policy in place.

The study revealed that the staff apply good records management practices in supporting administration of justice at Milimani Commercial Court. This was reflected by the timely presentation of records to the judicial officers.

The court has no case management system to manage the records. The adequacy of the current records management practices supporting administration of justice at Milimani

Commercial Court rely on the functionality of the case management system. The case management system is not in place, records management is mainly manual-based as clients accessed their records through requisition. It can be concluded from these findings that records management practices at Milimani Commercial Court are inadequate and require a case management system to manage the records.

Roper and Millar (1999) argued that preserving the record's integrity is another aspect of maintenance. They further stated that the record keeping system within a legal system environment should ensure that information is maintained in a secure environment. They argue that court records are very important and must be protected physically to ensure that they are available for the administrative and legal purposes as well as for informational and research purposes. Court records need to be maintained in such a way that they can retain their value. Though preservation measures have been put in place there is still a lot of congestion and dust in the record areas. According to Commonwealth Secretariat (2009) and IRMT (1999) preservation of records involves ensuring that records are safe from loss and damage. Records must be protected from natural disasters, from acidity, excessive exposure to light and from mishandling. A slightly positive air pressure balance should be maintained within records storage area to ensure consistency of temperature and relative humidity (Commonwealth Secretariat, 2009).

The study also revealed that the court is not immune to disaster and that there are potential disasters likely to affect the court records that will require adoption of strategic measures to mitigate and cope with disasters. Thomas, Schubert and Lee (1983) suggest

that in order to prevent the loss of records in case of a disaster, institutions should identify those records which were considered vital in the access to justice process and such records should be digitized, produced in multiple copies and kept in secure facilities within the institution or entrusted to trusted off site facilities. It can be concluded that the court does not have a document on disaster management neither are the staff trained in disaster management. Therefore in the event of a disaster the court runs the risk of losing its vital records.

From the study it came out clearly that majority of the staff do not possess the right knowledge and skills in records management and this affects service administration of justice. According to IRMT (2002), proper records management requires trained staff, adequate and continuous funding. Motsaathebe and Mnjama (2007) mention that managing records requires time and effort and this can be achieved through dedicated and well trained staff. Studies done by Motsaathebe and Mnjama (2009) revealed that due to problems encountered in managing court records, in Kenya, the Sub–committee on Ethics and Governance (2005) suggested the standardization of training of qualification to regulate entry level for all registry personnel and also short training courses for personnel registry. The staffs require to be regularly well trained in records management to remain well horned in their work. It can be concluded from these findings that the court does not provide training opportunities regularly which reduces the productivity of the staff. The study revealed that the court has many operational challenges that negatively affect the staffs' efficiency in service delivery.

Milimani Commercial Court needs to adopt various measures to improve its records management so as to support administration of justice. The cited measures to improve its records management includes; creation of adequate storage space through digitization, improved remuneration of staff, regular staff training, adoption of modern technology in record management, purchase of good quality filling cabinets and shelves, recruitment of additional staff, strict handling of files to reduce tampering of information, prosecution of corrupt staff, dismissal of complacent staff and regular updates of the records to correct misfiling resulting from human error. It can be concluded that records management at Milimani Commercial Court needs to be improved to avoid inefficiency.

5.4 Recommendations

5.4.1 Develop a Policy Framework to Govern Records Management Practices

The Record Managers have to develop a comprehensive policy framework that will help the court to control, manage and standardize its records management practices in all its registries. A good records management starts with a policy which reflects an organization needs. The objective of the policy should be the creation and management of authentic reliable, complete and usable records which are capable of supporting the courts functions and activities for as long as they are required. The policy will ensure that records are well managed right from creation to disposition and that they are managed by professionals. The records management policy will be underpinned by procedures and guidelines for compliance by the staff. The policy will ensure that the right storage equipment is used and that there is adequate security for the records by eliminating risks from uncoordinated records management practices. There will be timely appraisal and

disposal of records with a policy in place and also the policy will ensure records retention and disposal schedules are in place. The policy will minimize the costs of managing court records and provide quality services to all the users. The records management policy needs to be put in place and the staff need to be sensitized in-order to achieve good records management practices. The policy should be updated periodically and the staff should be sensitized on the same. Record Management Policy also provides a framework for best practices in record management that can be followed by all employees.

5.4.2 Staff Training and Development

Managing records efficiently and effectively takes commitment, time and effort. This can be achieved through the use of dedicated and trained staff. All staff should be trained on the basics of records management to help them manage these records. Knowledge of records management should be one of the basic requirements for someone to be employed as a registry staff. This is very important for managing records because, such individuals will have knowledge on all records management processes, thus provision of records management services will be attained rather easily. The court should employ professional records managers to help and direct the staff in their records management activities. Milimani Commercial court should invest and budget for staff training and development.

Staff training should not be compromised but it is an issue that need to be addressed and budgeted for. This is because every staff is involved in the creation of records and their use. This is essential in addressing the weakness of inadequate professionalism in records

management by creating an understanding on the importance of records management in the court as a whole. These staff should be sufficiently trained and be prepared to oversee and provide leadership in records management within the registries.

5.4.3 Automation of Court Records

The ICT department in conjunction with the registry should automate all the registries functions and activities. ICT has an enormous potential to improve the administration of justice. ICT can facilitate speedier trials and enhance the efficiency and effectiveness of administration processes through data management and data processing. They should automate file tracking activities which have been problematic by introduction of computerized file tracking systems, to address concerns raised due to misplacement and misfiling of records. It will also prevent strategic risks arising from inadequate or delayed management decision making due to lack of or delayed delivery of records. This will support administration of justice by avoiding a bad reputation arising from delayed justice delivery due to difficulties in accessing records.

The ICT department should be able to come up with a case management system that is tailor-made for the records at Milimani Commercial Court. It will promote efficiency, quick retrieval of records, expedite delivery of justice and generate reports.

5.4.4 Develop a Disaster Management for Records Management

A disaster management programme for records should be developed by the Records Manager to establish standards for records protection. Disasters are inevitable and they should be planned for to minimize risks. This programme should cover all aspects and

types of disasters including artificial, man-made and natural.

A training programme on disaster management and recovery for records should be developed by the training and development department at Human Resource in-conjunction with the Records Manager for all staff or those responsible for records management. The programme should cater for all aspects of records preservation and conservation as elements of disaster planning for records within the court.

5.4.5 Records Storage Equipment

From the study it was noted that one of the records management infrastructure was storage equipment. The equipments used at Milimani are inadequate and not tailor-made or ideal for the court records and they have highly contributed to the poor state of the records plus continuous wear and tear. The Records manager should liaise with the procurement officer to ensure that they procure the right and adequate storage equipment for all the registries. The storage equipment should not only be ideal for the records but they should be of high density, fire-proof and able to protect the records. They should be durable, rust free and lockable for security.

5.4.6 Security Policy

The potential for unauthorised access is a significant risk to records, as it may result in alteration, damage, destruction or theft. Security of records is paramount in order to preserve the integrity of these records. Tampering with or loss of records, particularly if they are vital, valuable or sensitive, may affect the courts ability to carry out business activities or meet accountability requirements. The Records manager has to develop a

security policy that will address issues of accountability, integrity and safety of records. This policy will help to promote confidentiality where classified records are concerned.

5.4.7 Records Back-ups

It is important that the court creates back-ups of all the vital records under its care so that in case of a disaster the court can continue functioning. The Records manager should conduct a records survey and appraisal to see what is vital and important and then with the In-charge ICT department ensure that records back-up are created and the copies stored. The same can be stored offsite and only used when the actual records cannot be repaired.

5.4.8 Microfilming

Microfilming is one of the preservation methods that can be used to save space. Since the study revealed that there is shortage of storage space at the Milimani Commercial court, the study recommends microfilming of court records. This is a preservation method for long-term storage. Microfilming is recommended due to its stability, its low-cost storage requirements and the fact that it does not require migration. It is a tried and tested medium that has been proven to have a very long-term durability of about 500 years, if stored in appropriate conditions. This will also help to save a lot of space currently occupied by semi-current and non-current records.

5.5 Suggestions for Further Research

Since this study explored the role of records management supports in the administration of justice and service delivery at Milimani Commercial Courts, the study recommends

that; similar study should be done in other types of courts for comparison purposes and to allow for generalization of findings on the role of records management supports in the administration of justice and service delivery.

5.6 Chapter Summary

This chapter discussed the summary of the findings which were derived from the research questions. The study concluded that Milimani Commercial court doesn't have a records management policy to govern its records management practices, there are no functional records management manuals to assist the staff to manage records and security of these records is wanting. The staffs don't have the right knowledge and skill to manage these records and thus they need to be trained. There were challenges that were encountered by staff in the management of records that impacted negatively on service delivery and measures were proposed to improve on the same. The study came up with recommendations which were; formulation of a records management policy, staff training and development, automation of court records, developing a disaster management programme for records, a security policy, having record back-ups and microfilming. The researcher suggested that further research should be done in the same area of study in other courts for comparison purposes.

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APPENDICES

APPENDIX I : INTERVIEW SCHEDULE FOR CLERKS AND REGISTRY STAFF

I am a Master of Science student in Records and Archives Management at Moi University, conducting a research on the Role of Sound Records Management in Supporting the Administration of Justice and Service Delivery at Milimani Commercial Courts. This is in partial fulfillment for the requirement for Master of Philosophy Degree in Records and Archives Management.

The study aims at assessing the on role of sound records management in support of administration of justice and service delivery at Milimani Commercial court. The results of the study are anticipated to support service delivery through strengthening of the Records management function.

I have identified you as one of the respondents to the study. Information provided will be treated with utmost confidentiality.

For any query /clarification please contact me, Anne Nafula, on 0722692827.

SECTION 1: BIODATA.. Date

Department/Unit--------------------------------------- Duties ---------------------------------

SECTION 1 RECORDS MANAGEMENT POLICY FRAMEWORK.

Do you have a records management policy to govern the management of court records?

What type of records are created and maintained at Milimani Commercial Court?

_____

_____

_____

In what format do the records currently in the registry exist and how are they categorized?

_____

_____

_____

Who are the users of the records in the registry?

_____

_____

_____

Are there records management manuals for the management of court records?

_____

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_____

Are the personnel working in the registry adequately trained to manage the records?

_____

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_____

How are the court records arranged and classified?

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_____

What retrieval tools are used in the registry?

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_____

How efficient is the retrieval of the required records?

_____

_____

_____

Are there file tracking methods/procedures to ensure records are not misplaced?

_____

_____

_____

What equipment does the registry have at its disposal for managing court records?

_____

_____

_____

How adequate are the storage equipment in the protection of court records?

_____

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_____

Is the space allocated for the court records adequate?

_____

_____

_____

Do you have a records centre for the storage of semi-current records?

_____

_____

_____

SECTION 2: SECURITY MEASURES

What security measures are put in place to protect the records?

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_____

Are those measures effective? If not why are they not effective?

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_____

SECTION 3: RECORDS MANAGEMENT AND ADMINISTRSATION OF JUSTICE

Are the court records presented to judicial officers in time? If not what are the reasons

_____

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_____

 Does the court have a case management system?

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_____

_____

How do the clients access their records?

_____

_____

What measures have you put in place to preserve the court records?

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_____

Is the physical environment in the registry appropriate for the management of records?

_____

_____

_____

What are the potential disasters likely to affect the court records?

_____

_____

_____

What measures are taken to protect the records?

_____

_____

_____

SECTION 4 : CHALLENGES

What challenges do the staffs face in administration of justice?

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What are the record management challenges that impact negatively on administration of justice?

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In your own view, what do you think can be done to overcome the mentioned challenges?

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_____

What can the staff do to improve records management and enhance administration of justice?

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APPENDIX II: INTERVIEW SCHEDULE FOR JUDGES AND MAGISTRATES

SECTION 1: BIODATA .... Date

Department/Unit--- Duties ------------------------

SECTION I

What type of records are received/generated at Milimani Commercial Court?

What type of records do you use at Milimani?

For what reasons do you use these records?

SECTION II RECORDS MANAGEMENT

Do you have a records management policy?

Are there staff dedicated for the functions of records management?

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_____

Are they trained in records management?

_____

_____

_____

What is your general view on records management at court?

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_____

_____

How efficient is the retrieval of the required records?

_____

_____

_____

Do you experience any delays from the staff due to missing/ misplaced or lost files?

_____

_____

_____

Are the staff efficient in their service delivery?

_____

_____

_____

SECTION III SECURITY MEASURES

Are the records protected from destruction?

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_____

_____

What security measures have you put in place to ensure sound records management?

_____

_____

_____

SECTION IV RECORDS MANAGEMENT AND ADMINISTRATION OF JUSTICE

How do you administer justice to the citizens?

_____

_____

_____

Do you encounter any difficulties as you deliver justice?

_____

_____

_____

How do records contribute towards administration of justice?

_____

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_____

In what ways is the Milimani Commercial court committed to administering justice to the citizens?

Are you provided with adequate tools to enable you carry out your duties efficiently?

SECTION V: CHALLENGES

What challenges do you encounter in administration of justice?

What challenges do the staff face when managing the court records and in administration of justice?

How can the above mentioned challenges be overcome?

APPENDIX III: INTERVIEW SCHEDULE FOR EXECUTIVE OFFICERS

SECTION 1: BIODATA   Date

Department/Unit-------------------------------------- Duties --------------------------------

What type of records are created and maintained at Milimani Commercial Court?

In what format do the records currently in the registry exist and how are they categorized?

Who are the users of the records in the registry?

How are the court records arranged and classified?

What retrieval tools are used in the registry?

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_____

Are the registry personnel trained to manage the records?

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_____

Do you have a records management policy to govern the management of records?

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_____Wh

at equipments and facilities do you have for storing records in your department?

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_____

How adequate are the storage equipment in the protection of court records?

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Is the space allocated for the court records adequate?

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_____

Do you have a records centre for the storage of semi-current records?

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Do you have a security policy?

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_____

What security measures are put in place to protect the court records?

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_____

Do you have a preservation policy/plan at Milimani Commercial court?

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_____

How are the court records preserved?

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_____

What measures have you put in place to protect the court records from destruction?

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_____

How would you describe the status of records in the registry?

_____

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_____

If poor what risks does the court face as a consequence of poor records management?

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_____

In your own view, is the physical environment in the registry appropriate for the management of records?

_____

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_____

Do you have a records disposal and retention schedule?

_____

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_____

What are the potential disasters likely to affect the court records?

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How do you assist the judicial officers in administration of justice?

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What measures have you put in place to ensure that cases are heard in a timely manner?

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_____

Do you have case management systems to manage the case?

_____

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_____

What strategies have you put in place to promote administration of justice to the clients?

_____

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_____

What are some of the records management challenges faced by the staff that impact negatively on administration of justice?

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_____

What measures can the staff put in place to improve records management and administration of justice?

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_____

_____

APPENDIX IV: INTERVIEW SCHEDULE FOR THE ADVOCATES AND THE PUBLIC

BIODATA   Date

Department/Unit-------------------------------------- Duties ---------------------------------

How often do you visit the registry?

For what reasons do you visit the court registry?

What records do you usually seek from the registry?

Are your needs met at the registry?

Are the court staff efficient in the administration of justice?

_____

_____

_____

Are they sensitive to your needs?

_____

_____

_____

Are the court officials friendly and courteous?

_____

_____

_____

Do you ever experience any delay due to missing files or records?

_____

_____

_____

If yes how do you normally address the issue?

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_____

_____

Do you understand the court processes and procedures?

_____

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_____

What security measures have been put in place to protect records from destruction?

_____

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_____

Do you encounter any challenges when seeking justice?

_____

_____

_____

In your own view what would be the best way the court can overcome these challenges?

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Do you experience any challenges in relation to seeking assistance from the court registry?

_____

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_____

If yes what recommendations can you make to solve the challenges?

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_____