

**MANAGEMENT OF COURT RECORDS IN SUPPORT OF
ADMINISTRATION OF JUSTICE: THE CASE OF ELDORET
CHIEF MAGISTRATE'S COURT**

BY

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**A Thesis Submitted to the School of Information Sciences in Partial
Fulfillment of the Requirement for the Degree of Master of Science in
Records and Archives Management, Department of Library, Records
Management and Information Studies**

**MOI UNIVERSITY
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2016

DECLARATION

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DEDICATION

I dedicate this work to my family; my wife Millicent for the encouragement and unrelenting support, my children: Selbut, Jepyegon, Koisok and Cheptirim for their 'silent' support and finally parents.

ABSTRACT

In Kenya today a lot of complaints have been raised about the performance of the judiciary in administration of justice mainly because of professional malpractice and poor records management practices which include delays, missing files and inadequate resources. The aim of the study was to investigate management of court records in support of administration of justice at Eldoret Chief Magistrate's Court with a view to proposing a best practice strategy for court records management. The specific objectives of the study were to: examine through a business process analysis the types of records created or received and how they are managed in Eldoret Chief Magistrate courts; ascertain the professional knowledge and skills of staff responsible for managing court records at the court; find what constitutes administration of justice and relationship between the way court records are managed and utilized in support of administration of justice at Eldoret Chief Magistrate's Court; explore the application of new technologies in court processes at Eldoret Chief Magistrate's court; identify challenges facing the management of court records and suggest possible solutions; propose a records management strategy for management of court records for good of administration of justice. The study was informed by two models namely; the Records Continuum Model advanced by Frank Upward and the Limited Autonomy and Commission Model of Canada. The literature review focused mainly on the relationship between records management and administration of justice; causes of poor recordkeeping in the judicial courts, records management and good governance, purpose of good records management, judicial reforms and administration of justice, among others. The study used the qualitative research approach. The population sample size consisted of 35 respondents who were purposively, conveniently and census drawn from the members of staff of Eldoret Chief Magistrate's Court, litigants and advocates. Face to face interviews, documents analysis and observation methods were utilized in data collection. Content and thematic analysis was used to organize, present and interpret the data; tables were used to summarize respondent's frequency and response rates. Key findings of the study were that; most records generated and received were predominantly manual and a few in electronic form, there were poor court records management practices and procedures with no records policy guidelines and frameworks, there was a large number of untrained and unskilled records staff responsible for managing court records at Eldoret Chief Magistrate's Court, administration of justice constituted adequate resources, collaboration with stakeholders and that effective records management supports administration of justice. The findings concluded that the lapses experienced in court records management at the court had contributed to the current problems facing administration of justice and due court processes. Recommendations proposed were; availing adequate resources, deployment of trained personnel, develop and implement records management policy guidelines and finally implementation of the court records management and administration of justice strategy proposed in this study.

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ACKNOWLEDGEMENT

I would like to express my sincere appreciation to my supervisors; Prof. J. Wamukoya and Prof. D. Rotich for ably supervising my research. I also extend my gratitude to the members of staff in the School of Information Sciences and particularly the department of Library, Records Management and Information Studies who in one way or another contributed to the success of this work. My appreciations also go to my employer Moi University for granting me the time, partial scholarship and research funds which collectively facilitated the completion of this study.

I am grateful to the judiciary management and the senior executive officer Eldoret Chief Magistrate's Court for giving me the authority and opportunity to conduct this research in their institution and not forgetting the National Council For Science and Technology for their authorization. Many thanks go to my colleagues for their help and encouragement.

Finally, I am grateful to my family, parents, brothers and sisters for always being there for me

CHAPTER ONE

INTRODUCTION AND BACKGROUND INFORMATION

1.0 Introduction

This chapter introduces and provides background information on the study. It outlines a brief background of records management and administration of justice, also definitions of concepts. Background of Kenyan court system is given. The chapter provides the statement of the problem, aim and objectives of the study, significance, scope and limitations of the study.

1.1 Background to the Study

For any organization to function effectively and carry on with its services there must be one form of record or another. Records are synonymous with every human activity. Records have existed since the creation of man and they play a crucial role in most human endeavours and are essential to all of our businesses and interactions. Government functions and accountability, medical treatment and scientific research and virtually all spheres of human life and business engagements depend on records (Duranti, 2001). All aspects of public service, including administration of justice, health, education, pensions, land, and judicial rights, depend upon well-kept and well-managed records. Records are vital to virtually every aspect of the governance process. The effectiveness and efficiency of the public service across the range of government functions depends upon the availability of and access to information held in records. Badly managed records adversely affect the broad scope of public service delivery, and decisions and actions are often difficult to implement and sustain effectively in the absence of well managed records. Just like information, records must be recognized as an asset with a tangible

value; which is often referred to as a fourth national resource or asset (after people, money and property).

The services provided with the support of records are vital to any organization and to every information-using employee in it. The primary function of records is to facilitate the free flow of information through an organization and to ensure that information is readily available where and when it is needed. To carry out organizational functions efficiently and effectively requires a sound records management programme. By helping the users to do their jobs better and more easily, the records manager provides invaluable service to the organization. Given that organization's records are unique to it, they need to be managed explicitly, just as the organization could manage its other resources, that is, people, money and estate. (Makhura, 2005).

Given the emphasis on governance today, every country must take and engage with records management to maintain its economic position and social values. Records management is the information responsible for measuring accountability and trust across economies and societies. Although the form of recordkeeping has changed as man has evolved, today, so are the principles of records management which are similarly changing. This therefore calls for records management discipline to apply well-established techniques and procedures to the control of those sources of information, which arise internally within an organization as a result of its own activities (Elwhiwhu, 2005).

1.2 Administration of Justice

The administration of justice is essentially a service delivered by the state to the community in order to preserve social peace and facilitate economic development through the resolution of disputes, the enforcement of criminal justice, and the determination of laws. This involves: simplifying and rationalizing laws and procedures; strengthening the independence of judges; improving the administration of the courts; balancing the costs of justice; upgrading the physical facilities of the courts; improving legal education, training, and user perception of the legal system. It further requires expanding access to justice for the poor and other disadvantaged groups; enhancing the quality of the legal profession; providing alternative dispute resolution mechanisms; and strengthening the impact of court decisions on society at large. All these elements are interrelated, multidimensional and need attention over the medium and long term. (Waleed, 2002).

Houghton (2006) citing Kibwana (1991) stated that justice is conceptualized not as an end result but a continuum. It begins from the idea of recognition of the rights of persons to protection, to opportunity, to vindicate, to restoration and restitution. The International Records Management Trust (1998) posits that when records are not produced at the right time, a fair judgement is denied on both the side of the offender and the government. It asserts that it becomes very difficult for the court to make a judgement or a decision making the public to loose faith in its government if reliable records are not maintained (IRMT, 1998).

Indicators of inefficient and ineffective administration of justice include lengthy case delays; extensive backlogs of cases; limited access to justice; a lack of transparency and predictability in court decisions; a shortage of financial, physical and other resources; and weak public confidence in the judicial system. Similarly, such forces as population growth, globalization, crime, urbanization, labor migration, poverty, gender bias, human rights, economic failures, peace accords, indigenous rights, technological advances, and citizen demands an efficient and effective administration of justice (Waleed, 2002).

Some of the factors and challenges leading to inefficient and ineffective administration and access to justice as pointed out by the Republic of Kenya, (1995), are illiteracy, lack of law enforcement by responsible government departments, corruption, poverty, intimidating demeanour by the courts, lack of incentives and proper supervision of judicial officers, slow implementation of legal and institutional and judicial reforms.

Waleed (2002) further stresses the need to restore traditional demand and supply balance of court services in certain countries (e.g. Chile) while in others there is a need to create and expand (e.g. El Salvador) access to court services. In others there is the need to make courts more efficient, transparent, modern and independent (e.g. Venezuela). Others need to expand coverage, streamline traditional means of justice and citizen participation and build trust (e.g. Guatemala). Overall, these challenges call for judicial reform since it benefits everyone--the public sector, the private sector, and civil society at large. Democratic principles demand that countries move towards judicial reform in order to have positive administration of justice.

Wamukoya (1994) stresses the need for the national archives to play an investigative role in auditing the effectiveness of recordkeeping regimes in the public service. This will ensure that the government record creating agencies within their specified jurisdictions do carryout their functions of maintaining accurate, reliable and retrievable records. A change in attitude on the part of public administrators especially records staff at the judiciary is necessary. Registry personnel need to interact with senior administrators in the judiciary. Improvements can only occur when senior management get involved in the management of records.

The Kenya Anti-Corruption Commission in acknowledging the vital role played by well-managed records in enhancing service delivery and as a key aspect underpinning good governance in any institution wrote a letter to all public universities on 18th March, 2011 on the subject “Enhancing corruption prevention through mainstreaming records management systems (KACC/ADM/1/31/Vol.III (200), 2011).

Furthermore, the National Archives and Records Service of South Africa (2004) observed that Government bodies can only be effective and efficient if;

- Records management is mainstreamed into business processes and designed to support business objectives;
- Records are considered a resource and are utilized fully and cost effectively to realize business objectives;
- Each government body creates and maintains a culture that promotes effective and efficient records management to facilitate efficient and timely decision-making.

In a nutshell records management, court records included has a direct bearing towards successful administration of justice in conducting its business activities which finally fulfils the rights of people.

1.3 Court Records

Court records are one branch of the legal records which comprise the other two as stated earlier; police and prosecutor records. Court records which are also judicial records include; criminal records, civil case records and probate records.

The Freedom of Information Act of Scotland (2002) defines a court record as: indictments (documents setting out charges in criminal cases) or written pleadings outlining the arguments to be put before the court, citations, specifications of documents, skeleton arguments and affidavits.” Court Records “Shall include all documents and records that are part of the court files of each case and all books, papers, calendars, statistical schedules and reports and other records pertaining to the management of court cases”.

As mentioned earlier the courts create several categories of records in the process of court proceedings. The Magistrate’s court creates three categories of records namely; criminal records, civil records and probate records. According to IRMT (1999) states that the courts have civil or criminal case files, which come into one of the following records; record books, order books, judgement books, appeals, original wills and registers of precedent. The probate files also which deals with wills and inheritance.

In Kenya, criminal records include treason cases and other offences against the state, terrorism, genocide, offences punishable by death, cases of life imprisonment, large scale frauds among others (the records emanating from these are charge sheets, criminal summons, indictment, affidavits file etc), while civil records cases include registers, diaries, case files, originating summons file, miscellaneous applications, plaint file, awards file, divorce file etc. The probate records are succession files, letters of administration and a grand of probate among others.

In records management, a record is “information created, received and maintained as evidence and information by an organization or person, in pursuance of legal obligation or in the transaction of business (ISO 15489-2001). A record is regarded as a document, regardless of form or medium created, received, maintained and used by an organization (public or private), or an individual, in pursuance of legal obligations or in the transaction of business, of which it forms a part or provides evidence ((IRMT, 1999).

The *ISO 15489 Standard on Records Management* (International Organization for Standardization 2001) 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 the processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records. Records management is the discipline and organizational function of managing records to meet operational business needs, accountability requirements and community expectations (Taylor 1996).

In the court system records management is defined as the process, system, or strategy by which courts and court users organise and control the filing conduct and disposal of court records (Sebutinde, 2003). Although the actual process, system or strategy of court records may differ from one jurisdiction to another, the bottom line is that it must be able to meet the needs of the courts and court users and should ultimately enhance the quality and administration of justice.

Records, and the information they contain, are a valuable asset that must be managed and protected. Records provide the essential evidence that a particular action or transaction took place or that a particular decision was made. Records support all business functions and are critical to the assessment of policies and programmes, and to the analysis of individual and organisational performance. Without reliable records, government cannot administer justice and cannot manage the state's resources, its revenue or its civil service. It cannot deliver services such as education and health care. 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 obligations of citizens and corporate bodies cannot be upheld. (IRMT and World Bank 2002).

According to ISO 15489-1 (2001), World Bank (2005) and IRMT (2005) the benefits of effective records management include:

- Effective management of state resources;
- Supporting accountability by providing reliable records of actions and decisions;
- Assigning responsibilities and authorities;

- Protection of rights and entitlements;
- Providing services to citizens;
- Providing continuity in the event in the event of a disaster;
- Meeting legislative and regulatory requirements and;
- Maintaining corporate, personal or collective memory

Sebutinde (2003) opine that good court records management and stakeholders' involvement are;

- Empowers all stakeholders in the litigation process to the expeditious resolution of disputes,
- Promotes the courts ability to manage the litigation and adjudication process,
- Minimum delays,
- Reduced cost of litigation, and
- Promotion of substantive justice.

1.3.1 Computerization of Court Records

Court systems across Africa have in the recent years embarked on computerization and digitization of their records as a way of enhancing the administration of justices. The objective of automation and digitization in the court systems is to support the jurisdictional and administrative functions of the criminal, civil, probate, labour and juvenile cases among others in the court. Studies carried out on automation of court processes have shown that the optimization of human and physical resources in the courts' performance of their judicial duties is best realised with Information Communication Technology tools. In Chile, for example, the introduction of computer

terminals in the criminal courts has made it possible to keep efficient records and information and to create databases which in the short term generate feedback of court processes.

In the year 2008 the Government of Kenya commissioned an ICT consultant to carry out a situation analysis and needs assessment, with a view to determining the nature and volume of the court records to be digitized, develop a digitization strategy and prepare an implementation plan for the strategy. The consultant had to prepare and cleanse files from 2008 backwards. A total of 325000 case files from court of appeal and high court were cleansed. In Eldoret, the chief magistrate's court, with the assistance of USAID embarked on a six month pilot electronic case management and automation demonstration program. This system was able to capture 9000 case files from January to June, 2010 as well as all active cases were diarized for court appearance.

The admissibility of records as evidence in a court of law requires that records are well maintained to avoid tampering so as to ensure accountability of records. Therefore, every court needs to have a program for managing the creation, maintenance, and disposition of all court records. Such a program will ensure that a record records management program is instituted to cater for the handling of a file from case initiation to destruction as well as the handling of other court records not necessarily associated with a specific case.

1.4 The Court System in Kenya

The Judiciary is one of the three arms of the Government established under chapter 10 of the Constitution of Kenya 2010. It is independent from other government functions and

provides a forum for the just resolution of disputes in order to preserve the rule of law and to protect the rights and liberties guaranteed by the Constitution of Kenya.

The Judiciary is headed by the Chief Justice and divided into two units: the technical unit comprised of the courts, and the administrative unit, which consists of departments for administration, personnel, accounts, procurement, planning, library services, ICT and the National Council for Law Reporting (NCLR). Besides this, there is the Judicial Service Commission, which is responsible for the Terms and Conditions of Service of the Judiciary (IRMT, 2011).

The mandate of the Judiciary is the administration of justice and judicial matters as set out by the Constitution of Kenya, on the organisation of the Government. The functions of the Judiciary include:

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

The Judiciary undertakes its functions as envisaged by the constitution through both the superior and subordinate courts. The superior courts include; Supreme Court, Court of Appeal, High Court, the subordinate courts are Magistrates' Courts, Kadhis' Courts; the martial courts; and any other court or local tribunal as may be established by an Act of parliament.

The Supreme Court

Article 165(1) of the Constitution establishes the Supreme Court which shall consist of the Chief Justice, Deputy Chief Justice and five other judges. The jurisdiction of the Supreme Court is exclusive original jurisdiction to hear and determine disputes relating to the elections to the office of the president and appellate jurisdiction to hear and determine appeals from Court of Appeal and any other court or tribunal as prescribed by the national assembly. The Supreme Court gives advisory opinions at the request of the national government or any other state organ or county government.

Court of Appeal

Article 164 establishes the Court of Appeal. It is headed by a president who shall be elected by the judges of the Court of Appeal from among themselves. It has the jurisdiction to hear from the High Court and any other court or tribunal as prescribed by an Act of parliament.

High Court

Article 165 establishes the High Court. Its organization and administration shall be prescribed by an Act of parliament. The principal judge of the High Court shall be elected by the judges of the High Court from among themselves. It has unlimited original jurisdiction in criminal and civil matters. It determines the question whether a right or fundamental freedom in the Bill of Rights has been denied or violated, infringed or threatened. The other jurisdiction is to hear an appeal from a decision of a tribunal appointee or to consider the removal of a person from an office. The High Court has supervisory jurisdiction over Subordinate Courts and any other body or person exercising judicial or quasi-judicial functions.

Subordinate Courts

The jurisdiction of these courts is determined on a territorial and pecuniary basis. They are presided over by magistrates.

Special Courts

These are courts which include;

Kadhi's Courts

Established under the Kadhi's Court Act, (Chapter 11 Laws of Kenya), it is presided over by the Chief Kadhi or a Kadhi. It has jurisdiction to determine questions of Muslim law relating to personal status, marriages, divorce and inheritance in proceedings in which all the parties profess the Muslim religion. Appeals to the Kadhi's courts lie to the High Court, which sits with the Chief Kadhi or two other Kadhis as assessors.

The Children's Court

Established in 2001, it deals with cases concerning children. It hears cases concerning parental responsibility, children institutions, custody and maintenance, orders for the protection of children. It also hears cases where a person has been charged with an offence under the children's Act. It however does not hear cases where the child is charged with murder, or jointly with adults.

Tribunals

These are quasi-judicial bodies established piecemeal to deal with specific matters.

The Industrial Court

Although called a 'court', it does not form part of the Kenyan Court structure. It is presided over by the judges appointed by the president and eight other members

appointed by the Minister of Labour. Its function is to settle trade disputes generally and in essential services.

Since the focus of this study is on *management of court records in support of administration of justice with particular reference to Chief magistrate courts, (Law courts) Eldoret*, a brief description of the set up of the current court system in Kenya is given below (strategic plan 2009 – 2012).

1.4.1 Magistrates Court Structure

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

For the purpose of this study the investigator found it necessary to acknowledge and appreciate that the courts operate on the mandate, vision and mission of the judiciary as the third arm of government under the ministry of Justice, National Cohesion and Constitutional Affairs.

1.4.1.1 Vision

The Vision of the Judiciary 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”.

1.4.1.2 Mission

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”.

1.4.1.3 Core Values

- * Cherish and defend the independence of the Judiciary;
- * Uphold integrity and honesty in the administration of justice;
- * Endeavour to make justice accessible and affordable to all;
- * Undertake to be fair, timely and efficient in the dispensation of justice;
- * Promote the spirit of teamwork in all our activities, and
- * Be friendly, courteous and responsive to all stakeholders.

1.4.2 Management of Court Records in Kenya

The first step in the creation of a court record is the registration of a suit where the person on his/her advocate presents his/her plaint for filing within a specific time. Upon registration the Registry Clerk calculates the fees payable and then opens a court file and allocates the suit Case Number. The plaint is then stamped and then two more copies are made for court file, plaintiff and one to be served upon the defendant and this mark the beginning of a case flow in Kenya.

According to Asuya (2011), posited that in Kenya the registries are disorganized and overwhelmed, in addition the records are manually kept and managed hence contributing greatly to the delays in disposal of cases, loss of records or lack of entries because of human errors or incompetence. The author further stated that an organized, automated

registry with computerized filing and allocation of cases; automated data management and case flow tracking, is essential to effective case management (Asuya, 2011).

In the management of court records the registry plays a pivotal role in the functioning of the court. It is the hub of all procedural and documentary activities at the court. The registry processes, records and directs the flow of all documents filed by the parties, and records all events which take place during the life of a case.

Registries are responsible for a variety of tasks some of which raise conflicts with the basic tasks of records managers. According to Judiciary Strategic Plan (2009 – 2012) their responsibilities include:

- Documentation, storage and retrieval of files, exhibits and other documents;
- Registration and processing of cases at every stage till they are disposed of;
- Assessment of collection of court fees, deposits and fines;
- Processing of typed proceedings;
- Processing of bonds/bail documents;
- Dispatch and handling correspondence;
- Preparation of appeal records;
- Provide a link between the courts and litigants;
- Keeping court diaries and allocation of mention and hearing dates
- Receiving and stamping documents
- Keeping exhibits and verifying the same
- Verifying documents before they are accepted for filing of cases;
- Housing court registries;

- Housing court seals;
- Preparation of files in an orderly manner and sequence;
- Assisting litigants with information about cases and dates of cases;
- Receiving affidavit and other documents, and
- Safe keeping and custody of court files.

1.5 Background Information on Eldoret Chief Magistrate's Court

The history of Eldoret law courts can be traced back to 1940. According to Barasa (2004) the Eldoret law courts were built almost immediately after the Nairobi law courts were built. This was around two to three years later. The European on their need to expand the formal judicial system built the courts. The passing of the railway line at Eldoret encouraged its construction in the place that it is situated at currently.

The Eldoret law courts have since been divided into sections that attend to different issues concerning the legal matters. These include the high court, the chief magistrate court headed by the chief magistrate who is in charge of lower and subordinate courts. The subordinate courts include the traffic section, the civil section, the criminal section and the children's courts, the mentioned courts are headed by paralegals. The lower courts are the prosecutions headed by the police.

1.5.1 Management of Records at the Chief Magistrate's Court

The Chief Magistrate Court is one among the other Law Courts within the town and is made up of eight (8) (Finance, Records and Archives registries, Purchasing and supplies, Security, Judicial, Administration, Transport, and ICT) departments which interact and

depend on one another for the achievement of the judiciary mission and objectives. All these departments create large volumes of records in their day to day operations.

Records management at the court are decentralized, the largest volume of records are the civil and criminal records which are managed by some officers in separate registries. Other department with records service are the personnel and administration, auditing, etc. The current recordkeeping situation in Eldoret Chief Magistrate Court is complicated by the rise in the use of computer Technology, the overwhelming volume and scale of records the court needs to manage particularly those relating to suits, just to identify a few of the impediments to effective recordkeeping. These challenges may have been brought as a result of back logs and delay of disposal of cases by the administrators of justice as well as failure to dispose off value-less records and this subsequently leads to space problems for storage.

1.6 Statement of the Problem

The efficient and effective management of court records in any country is of paramount importance to conducting court proceedings and successful completion of court cases in a timely manner and ensuring justice is delivered to citizens. The Judiciary and the public rely upon court records which should be complete, accurate, and readily available, in order to ensure delivery of justice is met.

In Kenya today a lot of complaints have been raised about the performance of the Judiciary in relation to the administration of justice partly because of professional malpractices on the one hand and poor records management practices on the other. Kenya Law Reports (2002) in an appeal case of John Otieno and the Republic of Kenya in the

court of appeal indicated that the case could not proceed because of missing files and this was acknowledged by the judge that it was not a strange occurrence and that it had happened on more than one occasion. Another case in point is the Karura Forest allottees where delays in the retrieval of files was prominently highlighted and in an effort to avoid blame that the files had deliberately been hidden.

The Senior Deputy Registrar General argued that “the files had never left the shelves at any time but it was a tracing problem where indices were not readily available” (Daily nation 16th November, 1998, in Mnjama 2003 and Musembi, 2005). On 30th March there reported cases of thieves in collusion with staff breaking into Kapsabet Law courts to steal files and computers (Daily Nation 30th March, 2012). In addition, East African Standard (2006) reported, murder case vital papers go missing.

The committee on ethics and governance of the Judiciary on November, 2005 pointed out some of the problems as; misplacement of files, manipulation of official receipts and missing files. IRMT (2011) while commenting on the situation in Kenya indicated that there is no central authority responsible for managing records and archives, no clear and uniform policies and standards on records management in the Judiciary except with regard to disposal of records. At the Chief Magistrate’s court indicated a large accumulation of records with torn covers especially at both the civil and criminal registries, inadequate professionally trained records management staff and lack of recognition of records management. All these challenges led to inefficiency in the administration of justice in Kenyan courts and by extension Eldoret Chief Magistrate’s Courts.

From the reports above it was clear that records management malpractices in most courts in Kenya undermines administration of justice and therefore this presents a potential research area for investigation. It was in view of the above that this study intended to investigate the management of court records in support of administration of justice at Eldoret Chief Magistrate's Court.

1.7 Aim of the Study

The aim of the study was to investigate the management of court records in support of administration of justice at Eldoret Chief Magistrate's Court with a view to proposing a best practice strategy for court records management.

1.8 Objectives of the Study

The specific objectives of the study were to:

1. Examine through a business process analysis, the type of records created/generated and or received, their importance and how they are managed at Eldoret chief magistrate's court.
2. Establish the professional knowledge and skills of staff responsible for managing court records at the Chief Magistrate's Court.
3. Find out what constitutes administration of justice and relationship between the management of court records and administration of justice at Eldoret Chief Magistrate's Court.
4. Assess the application of information communication technologies in court process at Eldoret Chief Magistrate's Court.

5. Identify challenges facing the management of court records and suggest solution and propose a records management best practice for management of court records for effective administration of justice.

1.9 Research Questions

To achieve the above objectives the study sought to answer the following questions:

1. What are the main business activities of the courts and what types of records are created and/or received?
2. What are the importance of court records in administration of justice and how they are managed at Eldoret Chief Magistrate's Court?
3. What policies and procedures, standard and records management manuals have been put in place to safeguard court records and information at the Eldoret Chief Magistrate court?
4. What relevant knowledge and skills do records management staff possess and where do they acquire such skills?
5. What constitutes administration of justice at the Eldoret Chief Magistrate's courts? And to what extent do court activities rely on court records?
6. What new technologies have been introduced in the management of court records and how have they contributed to the revolution of court business? And if any what benefits have been realized in records management in the administration of justice?
7. What are the challenges facing the management of court records and how do these affect administration of Justice at Eldoret Chief Magistrate's court?

8. What possible recommendations for improving records management in order to promote administration of justice?

1.10 Assumptions of the Study

Assumptions are guesses, expectations, or suppositions that a researcher makes as a prelude to the study (Mugenda and Mugenda, 1999). The study was based on the assumption that Poor court records management undermines the administration of justice hence the need for a best practice strategy to enhance the management of court records at the Eldoret Chief Magistrate's Court.

1.11 Significance of the Study

On policy related significance the study will promote efficiency and effectiveness of business operations at the courts by addressing the shortcomings realized in the study and by adopting the proposed strategy in aligning court records management and administration of justice in the activities and processes of the Chief Magistrate's law Courts. Theoretically, the study contributes towards the body of knowledge on court records management in support of administration of justice and the basis for the development of policies, practices and theory of records management as an integral in justice delivery. The findings will also help records staff, litigants, advocates and the general public understand their rights and importance of court records in delivery of justice.

1.12 Scope and Limitations of the Study

This study investigated the management of court records at Eldoret Chief Magistrate's Court within Eldoret town this is because the researcher wanted to get an in-depth knowledge on the state of court records in supporting administration of justice as a case study. The targeted respondents were the magistrates, records staff, litigants and advocates.

The limitations encountered in the study included the following;

1. With the culture of secrecy and delay in passing the FOI Bill by parliament the researcher encountered some reluctance and corporation of some respondents to corporate fully in releasing required information. However with the current Constitution and Bill of Rights every citizen has a right to information which the researcher had explained to the respondents without really coercing.
2. There was too much bureaucracy and delays in the approval and acceptance of my study by the judicial system both at the Eldoret chief magistrate's law courts and the Supreme Court. In fact it took more than four months to be granted permission.

Despite the stated limitations the findings and recommendations are worthy of acceptance and implementation

1.13 Chapter Summary

This chapter has provided pertinent and background information on the various aspects of the study ranging from understanding of administration of justice in broader terms to legal records overview and how such records support administration of justice, this was supported by many source both from the local scenarios and outside Kenya. Through many documents brief background information about the Kenyan Judiciary and the Court System has been highlighted. The problem statement has pointed out clearly the problems brought about by poor court records management in Kenya, some of which include; missing files, file retrieval delays, stolen records, lack of recognition of records management staff and strong policies and procedures in the management of court records. Based on this statement of the problem it was therefore found necessary that this study was to be undertaken to get more information and solutions. This was done by providing Aims, objectives, research questions, significance and assumptions relevant to the study area and place taking into consideration the scope and limitations.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter reviews literature related to the study and provides the theoretical framework underpinning the study. The main themes covered under the literature review include: the concepts of records and records management, importance of records management, administration of justice and its importance, relationship between records management and administration of justice, the impact of administration of justice on records management in Kenya and the challenges facing the administration of justice.

2.1 Literature Review

The University of North Carolina (2008) describes literature as any collection of materials on a particular topic not necessarily great literary texts of the world. According to the author, literature review discusses published information in a particular subject area and sometimes within a particular period of time. Literature review involves a study of various sources of information about a particular area of interest or topic and usually has an organizational pattern that combines both summary and synthesis. This is as far as they are related to the aims and objectives of the study.

A literature review is an evaluative report of studies found in the literature related to your selected area. The review should describe, summarize, evaluate and clarify this literature. It should give a theoretical basis for the research and help you determine the nature of your own research. Select a limited number of works that are central to your area rather

than trying to collect a large number of works that are not as closely connected to your topic area. (Boote and Beile (2005).

2.1.1 The Purpose of Literature Review

Boote and Beile (2005) posit that a literature review goes beyond the search for information and includes the identification and articulation of relationships between the literature and your field of research. While the form of the literature review may vary with different types of studies, the basic purposes remain constant:

- Provide a context for the research;
- Justify the research;
- Ensure the research hasn't been done before (or that it is not just a "replication study");
- Show where the research fits into the existing body of knowledge;
- Enable the researcher to learn from previous theory on the subject;
- Illustrate how the subject has been studied previously;
- Highlight flaws in previous research;
- Outline gaps in previous research;
- Show that the work is adding to the understanding and knowledge of the field, and
- Help refine, refocus or even change the topic.

Other purposes of literature review according to Nieswiadomy (2008) include:

- Determining what is already known about the topic you wish to study;
- Understanding existing knowledge of the topic;

- Helps to establish a framework in which to place the study results and
- It helps plan the study methodology.

The benefits of conducting a literature review in any study were highlighted by various scholars (Kaniki, 2002; Kothari, 2004). Birley and Moreland (1998) pointed out that a literature review assist in the achievement of a critical analysis of the existing literature in the proposed research area, in clarifying and framing research questions as it discovered what has been done and not done, prior to the proposed research, and in the provision of a comparative account of the suitability, advantages and disadvantages of particular research methodologies chosen in the past, which are relevant to the study. Other purposes include the literature review being useful in discovering research findings and how they relate to the existing appropriate literature.

A chapter on the literature review/theoretical framework needs to have boundaries, as one would not review everything, and there is also a need to state how one decided to limit the field. According to Oliver (2004), the word "review" indicates that one should summarize the broad content of the research study, and also indicates clearly linkages with other studies in the field. Furthermore, the principle purpose of a literature review is to establish the academic and research areas that are of relevance to the subject of the research.

2.2 Theoretical Framework

The role of theories in scientific research cannot be over-emphasized. Nieswiadom (2008) is of the opinion that theories enable researchers to draw new conclusions, improve action and generate theories that are more sophisticated. Thus, theories are a set

of interrelated constructs – concepts, definitions and propositions that present a systematic view of phenomena by specifying relations among variables with the purpose of explaining and predicting phenomena (Cresswell, 2003). A theoretical framework is an examination of the existing or self-formulated theories in relation to the research objectives.

The theoretical framework for this study was derived from Records Continuum Model, which originated in Canada but was developed in Australia by Australian archival theorist Frank Upward in 1990s. This was due to inadequacies found with the basic records management models like the Records Life Cycle Model especially the definition of records and its lack of mechanism for managing electronic records.

2.2.1 Records Life Cycle Model

The life cycle is based on the idea that records become less important as time passes. 90 percent of the use of a record takes place during the first 90 days after it is created. This short period of high use is followed by a longer period of low use. The records only need to be looked up occasionally during this second phase. Eventually, even this limited use will end and the records will have no further value to their creator (Figure 2.1 below).

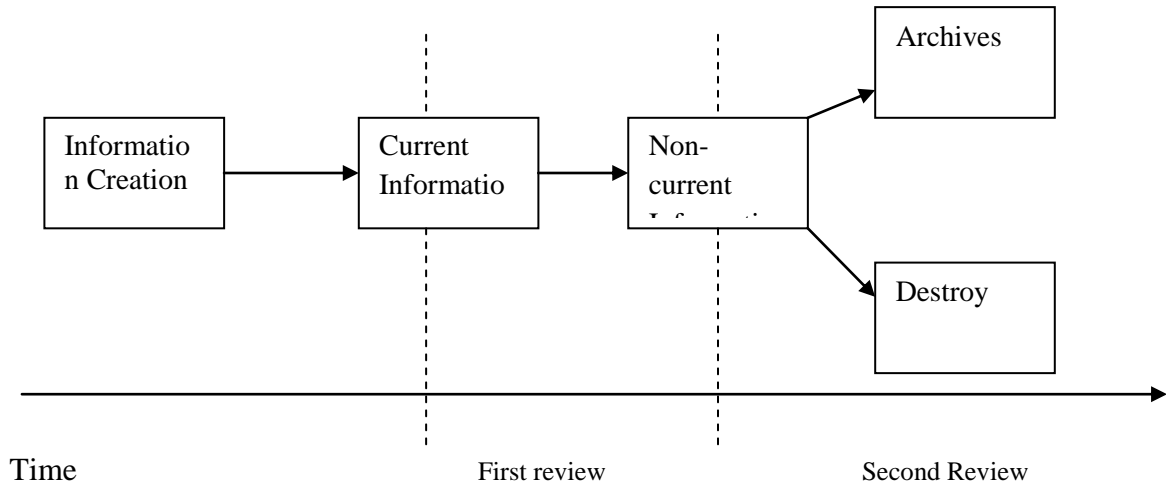


Figure 2.1: Records Life Cycle

Source: Penn, (1994) Records Life cycle

Figure 2.1 above shows a lifecycle concept of information which traditionally represented by a linear diagram with horizontal axis representing “time” from creation. In this model there are four stages in which records/information pass according to Penn et al(1994).

These are;

- **Creation:** Records begin the life cycle when they are created or received.
- **Active Records:** Active records are needed frequently. They are retrieved at least once per month, so they are stored in readily accessible office spaces.
- **Semi-Active/Inactive Records:** Semi-active records are not needed for day-to-day business. Organizations need to keep them for reference, for legal reasons, or for financial reasons. They are not used often enough to justify their being stored in prime office space and equipment. Semi-active records are often stored at a lower

cost in a records centre. Semi-active records are sometimes called “inactive records.

- ***Final Disposition:*** Final disposition is the action that takes place when records have no more value to an organization. In many cases, final disposition can involve: either physical destruction of the records or transfer of the records to the custody of the Archives.

Looking at records continuum and lifecycle models critically shows that the records continuum model's advantages outweigh the lifecycle model, particularly in electronic records management (Upward, 1998). In "Life Cycle Versus Continuum--What Is the Difference;" Peter Marshall states that 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. It promotes the integration of recordkeeping into the organizations' business systems and processes.

The records life-cycle theory is seen to be more applicable to studies dealing with the management of paper based records and not electronic records as seen in most organization. It is on the basis of this background that the records continuum model will be adopted for this study since the study will not discriminate records in any formats.

2.2.2 The Records Continuum Model

The records continuum model will form the theoretical framework of this proposed study. Defining the records continuum model according to the Australian Records Management Standard, AS 4390, Xiaomi (2003) refers to it as a consistent and coherent regime of

management processes, from the time of records creation to their preservation and use as archives. According to Xiaomi (2003) this definition suggests an ideal integration for documents, records, and archives management. Under the model, records do not pass through distinct stages, the records continuum model stages, as implied, in the records life-cycle model. These stages are interrelated in the records continuum model, forming a continuum in which both records managers and archivists are involved to varying degrees in the management of recorded information.

In her Article "*A Chinese view of Records Continuum Methodology and Implications for Managing Electronic Records*" Xiaomi (2002) noted the evolution of the concepts of records continuum had three periods: origins of the continuum concept; wide use of the word 'continuum'; and the formulation and implementation of records continuum model to the electronic and paper records management.

In the first period, the earliest view of the continuum concept came from the national archivist, Ian MacLean in the 1950's. He declared that records managers were the true archivists, and that archival science should be directed towards the study of the characteristics of recorded information, recordkeeping systems and classification processes (Upward 2000). His view promoted the search for continuity between archives and records management.

In the second period, the word continuum was not widely used in Australian recordkeeping in the mid of 1980s until Canadian archivist Jay Atherton made it explicit at the annual conference of the Association of Canadian Archivists in 1985. According to Atherton (1985), all stages of records are interrelated, forming a continuum in which

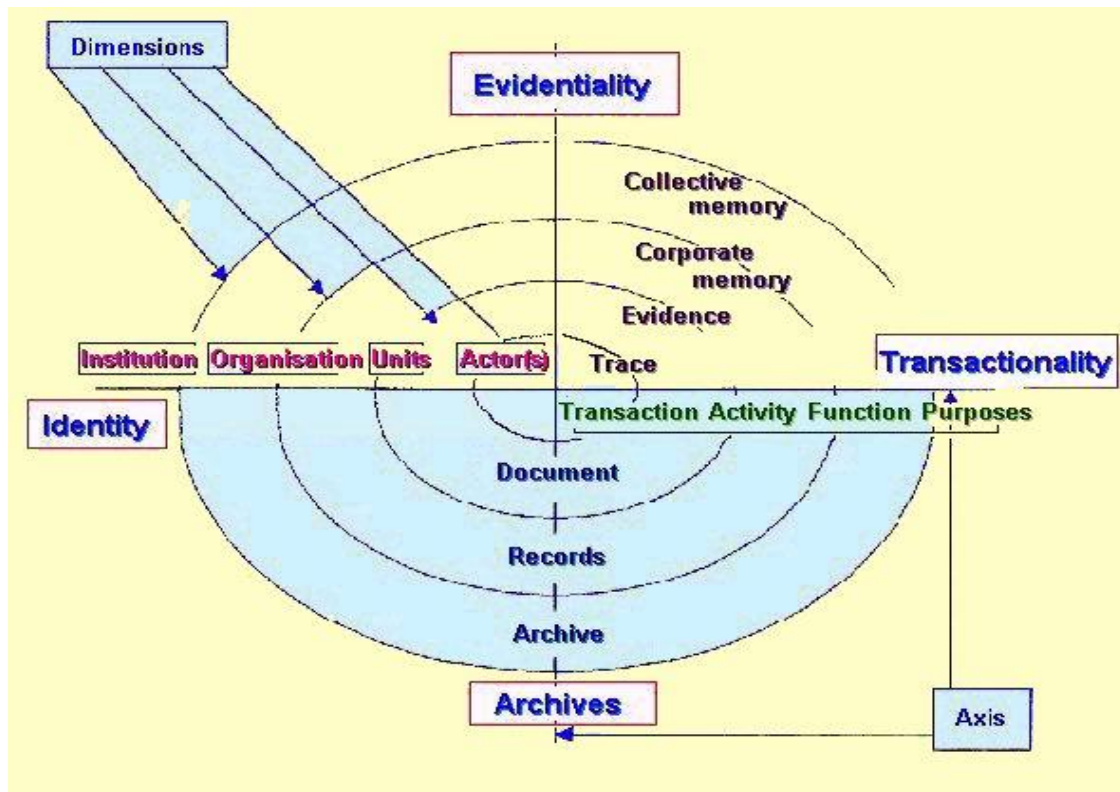
both records managers and archivists are involved, to varying degrees, in the ongoing management of recorded information. He showed how the life cycle stages that records supposedly underwent were in fact a series of recurring and reverberating activities within both archives and records management.

The underlying unifying or linking factor in this continuum was the function of service to the records' creators and all their users (Flynn 2001). This view pointed out the weakness of the separation of records management and archives administration under the lifecycle model.

In the third period, records continuum as a model way of thinking was formulated in the 1990s by Australian archival theorists, Frank Upward (*See Figure 2.2. The Upward's records continuum model*). He states four principles of the records continuum model.

1. A concept of "record" inclusive of records of continuing value (archives) stresses their uses for transactional, evidentiary, and memory purposes, and unifies approaches to archiving/recordkeeping, whether records are kept for a 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 explored in terms of the operation of principles for action in the past, the present, and the future.



Source: Xiaomi, (2001).

Figure 2.2: Records Continuum Model

Figure 2.2 above show The Records Continuum model with four axes dealing with archivists' concerns on four major themes in archival science: evidentiality, transactionality, identity, and recordkeeping containers. Four dimensions of the continuum are identified: document creation, records capture, the organization of corporate and personal memory, and the pluralisation of collective memory. "The model

provides a graphical tool for framing issues about the relationship between records managers and archivists, past, present and future, and for thinking strategically about working collaboratively and building partnerships with other stakeholders.” (McKemmish 1998). Pederson (1999) stated that such a model has four basic recordkeeping functions: **CADS** that is Control, Accessibility, Disposal and Storage.

According to Kemoni (2008), in a continuum there are no separate steps (see figure 2.2). Managing records is seen as a continuous process in which one element of the continuum passed seamlessly into another. Under the records continuum model, archivists and records managers would be involved in all the stages of managing records. Through this it would be possible to ensure the creation of the right records containing the right information in the right formats; organize the records to facilitate their use; systematically dispose of records no longer required, and protecting and preserving records. Records continuum concept is a variation of the records life-cycle concept and that it took a higher-order intellectual view of records, since it followed an integrated model rather than one made up of stages. The model stresses the need for records professionals to be involved in the earliest planning stage of information systems (McKemmish, 1997).

The records continuum model offers an integrated approach to managing records, particularly electronic records. The model recognized that records passed through identifiable stages, but the stages acted as a point of reference rather than as functions of records management. Significantly, the model allows records managers and archivists to operate at the appropriate stages of the records continuum to meet their objectives (Kemoni, 2008).

Acknowledging that the model provides a way of conceptualizing recordkeeping in organizations, McKemmish (1997) outlines the following features of the Records Continuum Model. It:

- a) Identifies key evidential, recordkeeping and contextual features of the continuum and places them in relationship to each other,
- b) Represents the multidimensional nature of the recordkeeping function,
- c) Maps the evidential, recordkeeping and contextual features of the continuum against the dimensions of the recordkeeping function, and
- d) Represents a broader socio-legal and technology environment.

Furthermore, records continuum model helps to clarify the nature and scope of recordkeeping in organization and society. In the article “The Records Continuum Model in Context and Its Implications for Archival Practice” Flynn (2001) explains that the continuum model is significant because it:

- broadens the interpretation of records and recordkeeping systems offered by the lifecycle model. Such broadening is helpful, given the variety of contexts in which archivists and records managers operate and in which records and archives are used.
- reminds us that records (including archives) are created and maintained for use as a result of business and administrative functions and processes, rather than as ends in themselves.
- emphasizes cooperation beyond the walls of repositories, especially between the closely related, if occasionally estranged, professions of archives administration

and records management - a cooperation that is more important than ever in the contemporary climate of outsourcing and cross-sectional working.

As earlier shown in figure 2.2 the Records Continuum helps us understand the nature and scope of recordkeeping in our organizations and in our society. It presents an overview of a seamless and dynamic recordkeeping regime that transcends time and space to capture and manage records for as long as they are required to satisfy business, regulatory, social and cultural requirements.

Because it addresses the whole enterprise of recordkeeping, it differs from and complements the concept of the Records Life Cycle that identifies various phases in the useful life or span of an individual record or particular bodies of records under management. The activities represented in it can take place over many years, sequentially or simultaneously and concurrently in real or virtual environments. Records are both current and historical from the moment of their creation. They are thus time and space bound, perpetually connected to events in the past.

Records continuum thinking and practice focuses on logical records and their relationships with other records and their contexts of creation and use. Thus the Continuum is a map of a dynamic, virtual place - a place of 'logical, or virtual or multiple realities' - and it always has been, even in the paper world. Because the continuum is holistic yet multidimensional, it can be separated out into its constituent layers like a band of light.

2.2.2.1 Relevance of the Records Continuum Model to the Study

Given that this study is about the management of court records, the records continuum model is seen to be the most appropriate. The model presents an overview of a seamless and dynamic recordkeeping regime that transcends time and space to capture and manage records for as long as they are required to satisfy legal, business, regulatory, social and cultural requirements.

The advantages of the records continuum model over the life cycle model are grounded in its mechanism, which consists of integration of the management of documents, records and archives. Kemoni (2008) posited that integrated approaches, integrated control and integrated framework can be components of a best practice framework. The records continuum model is more applicable to records and archives management hence its use as a theoretical foundation of studies dealing with the management of both paper and electronic records and archives.

In adopting this theory the researcher will not ignore some of the doubts which have been raised against it. In particular, the model has generated certain concerns and fears with regard to the notions of its theory, which has generated a certain reaction of fear and loathing in many people in the records and archives industry (Picot, 1999). This fear was translated to the effect that records managers and archivists shared both territory and professional competencies and thus the continuum model posed a threat to their autonomy. Picot (1999) cautioned however that, though the model would be involved to justify restructuring, job cuts or changes in workplace practices, these would not invalidate its usefulness.

2.3 Administration of Justice Models

The models presented here were borrowed from the government of Canada (Canadian Judicial Council, 2006).

2.3.1 The Executive Model

This model is dependent on the level of trust and communication that exist among specific persons occupying key decision making position and their dedication and willingness to make modification to the pure executive model. It is a very positive sign that those modifications most if not all towards greater (but limited) judicial autonomy - have generated significant improvements and have earned support from both the court and the executive. However, the independence of the judiciary, the effectiveness and efficiency of the courts, and public confidence in the justice system requires an improved and robust model that ensures that jurisdictions take full advantage of more of the types of improvement that have already proved.

2.3.2 The Judicial Model

This model has judicial control over virtually all courts administration decisions. It resolves some of the concerns with executive model but rise to a different parallel set of legitimacy and accountability concerns over the role of the judiciary in self governing courts.

2.3.3 The Limited Autonomy Model

It resolves most of the key concerns with the executive model and consistent with systems of parliament supremacy, and while maintains democratic accountability over resource allocation this model is based on judicial control and autonomy over core areas

of court administration. The model recognizes that judicial model is limited. This model leaves out the determination of the overall total court administration budget with the executive or legislature. Again it does not address dispute resolution between the judiciary and executive over court administration policies.

2.3.4 The Independent Commission Model

This model provides a level playing field; however it does so by reducing the influence of the executive (and others) to a level similar to that of the judiciary. This model fails to resolve one of the key concerns with executive model, since it fails to enhance the judicial role in court administration decision making, while reducing the government's role.

2.3.5 The Limited Autonomy and Commission Model

It accommodates both the limited and commission model in order to provide a mechanism for resolution and avoidance of disputes. This model as postulated by the author has the ability to achieve the goals and objectives of the court administration as highlighted below;

1. better preserve judicial independence and the institutional integrity of the judiciary as a separate branch of government,
2. to better enhance public trust and confidence in the judicial system,
3. to better improve the quality and delivery of judicial services, more specifically;
 - a. by making court dispute resolution more accessible,
 - b. by ensuring a more timely pace of litigation,
 - c. by enhancing the quality of dispute resolution, and

- d. by enhancing court transparency,
4. better develop within the court an enhanced capability and culture of continuous improvement and reforms.

2.3.5.1 Application of the Limited Autonomy and Commission Model in Administration of Justice

This was the most preferred model in the administration of justice since it overcomes such shortcomings as lack of a single source of clear leadership and accountability, divided loyalties of court staff, absence of stable funding and strategic planning capacity and independence of the judiciary. This model focuses on the public interest in efficiently and effectively running the courts un-distracted by the executive or political class.

With this model courts may develop independent and direct relationships with other government departments, stakeholder groups in the justice community and the public at large. Countries like Singapore, Australia and United States state that self administered courts have a comparative advantage over the executive-led administration of courts in terms of confidence and competence. Again transparency and accountability are greater when innovation is developed by self administered courts.

2.3.6 Triangulation of the Records Continuum Model and the Limited Autonomy and Commission Model

Triangulation is the combination of methodologies in the study of the same phenomenon. It is the use of multiple theories in tandem to study on organizational phenomenon. It mixes theories, methods, and multiple data sources to strengthen the credibility and applicability of findings (Hoque, 2006).

This study was informed by the two models. This was necessary given that the study touched on two distinct areas of disciplines and practically related in both records management and administration of justice. The Limited Autonomy and Commission Model guided this study on the administration of justice related aspects while the continuum model guided the records management aspects. Since records management facilitates the rights of the citizens it was therefore very important to fulfil this requirements of their rights which can better be served using the limited autonomy and commission model in administration of justice. Again records management promotes integration of recordkeeping systems into organizations business activities, functions and processes and hence meets the needs of administration of justice that is retrospective in its business activities.

2.4 Records and Records Management

Scholars have given some aims and defined records management from various perspectives.

According to North Territories (2002) the aims of records management should include;

- formulation of policies, procedures and standards for handling records,
- creation, usage and keeping track of records in the office,
- finding ways of storing records as cheaply and efficiently as possible and
- protection of records that need to be kept and disposal of those which are no longer of any value the organization.

The author further opined that records management provide the corporate memory of an organization. They document an organization's accountability, preserve, the evidence of an organization's activities, enable timely access to current administrative information

and ensure that records of archival are marked for preservation at the time of creation and not in advertently destroyed.

Before we understand records management we need to define a record “as any documentary material regardless of physical form or characteristic, made or received by an organization in pursuance of law or in connection with the transaction of business, and used by that organization or its successor as evidence of activities or because of informational value.” (Makhura, 2005)

Johnson and Kallaus (1987) define records management as the process of planning, staffing, directing and controlling all steps involved in the life of a record from creation until final disposal. IRMT (1999) noted records management as that area of general administrative management concerned with achieving economy and efficiency in the creation, maintenance, use and disposal of the records of an organization throughout their entire life-cycle and in making the information they contain available in support of the business of that organization.

The National Archives and Records Service of South Africa (2006), defines records management as a process of ensuring the proper creation, maintenance, use and disposal of records to achieve efficient, transparent and accountable governance. Sound records management therefore, ensures that all records that Government bodies create in the conduct of their official business are, and remain, authoritative and authentic.

Organisational records are managed through a process known as records management. Records management is defined in ISO 15489 as “a field of management responsible for

the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records...”ISO 15489 notes that management of records includes but not limited to:

- setting policies guiding records creation and their management as well as standards mapping processes that are to be applied in records creation, maintenance, use and disposition;
- assigning records management responsibilities among staff of an organisation;
- putting into place records management procedures that would ensure uniformity of processes;
- choosing and oversight of records management systems, and
- Ensuring that records management is integrated into each business process of organisations.

To assist in the effective creation and general management of records, organisations should institute a records management programme composed of among others:

- a system that evaluates the business processes an organisation carries out and determines the information resulting from each process and ascertaining which of it has to be captured as records;
- making decisions on the form of records to be created and the appropriate technologies needed to support and enhance their creation;
- evaluating metadata needed as part of the record and establishing how the metadata will continue to be linked to the record as long as it is needed for the business process that led to its creation;

- designing retrieval mechanisms for records and ensuring that the records can be shared by business processes without getting lost, being altered or damaged;
- assessing risks associated with failure to create and maintain appropriate records or failure to retrieve them when they are needed;
- deciding how records will be preserved over time to enable their availability any time they are needed for conduct of business;
- ensuring records are retained for appropriate periods that tally with business processes;
- seeing to the safe and secure maintenance of records;
- establishing methodologies for evaluating and monitoring the effectiveness of systems instituted for managing records.

Benefits of Records Management

Government of South Australia (2005) notes 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 Freedom of Information and Information Privacy principles.
- Increased productivity and individual accountability.
- Benefits and Characteristics of Literature Reviews

Having defined what constitutes a record and records management, the next sections are to determine the link between records management and administration of justice among other issues.

2.5 Business Process Analysis and Records Management

Business process analysis (BPA) enables an organization to find solutions that address record keeping at all stages of the records life-cycle and more importantly within the context of the business process which the records support (Kansas Electronic Records Management Guidelines, 2002). Huth (2003) noted that it is necessary to undertake a business process analysis to identify requirements for creating, managing and promoting access to records that support an organization's business needs including legal and evidential requirements. Similarly, University of Toronto (2009) noted that undertaking a business process analysis was an excellent opportunity to reconsider record keeping practices since it often identifies problems which could be improved.

If record keeping requirements are identified during a business process analysis, effective procedures and automated routines can be built into the processes to handle records more effectively. Huth (2003) observed that business process analysis was closely related to a needs assessment. It examines and describes a work process in order to design an improved process that may or may not use technology. The author further noted that

BPA focuses on workflow and policy issues and it is used when the root cause of a problem is unknown.

Undertaking a business process analysis is a good choice if the problem an organization hopes to solve stems from inefficient or outdated business processes. It is necessary when one does not have a good sense of how to solve the problem. According to NARA (2005) an organization that uses BPA to determine its business requirements can be confident that it is capturing the right records in all formats required to meet its business needs. It will ensure that the organization is creating, maintaining, protecting and providing appropriate access to authentic, reliable and trustworthy records throughout the records life-cycle.

A business process analysis was conducted to establish the business activities and records that were generated and received by Eldoret chief magistrate's law court. This enabled the study to identify specific records management requirements such as, the need for a policy to guide the management, to be equipped with knowledge and skills in records management practices resource allocation among others. An agency that undertakes a business process analysis will feel confident that it is capturing the right records for its business processes and that it is maintaining, protecting and providing appropriate access to records in a trustworthy way (Benchmarking Report on Business Process Analysis and System Design for Electronic Record keeping, 2005 in Nasieku, 2010).

2.6 Relationship between Efficient Records Keeping and Administration of Justice

Efficient court services provide one of the strongest foundations for good governance. In turn, an efficient court system must of necessity be based on effective record keeping systems and services. Many Kenyans will recall the frustrations they have experienced as a result of poor record keeping systems in the courts. Cases of missing and lost files have been regularly reported in the print media (East African Standard, 2001).

There is no doubt that this has undermined the administration of justice. It is a matter of gross injustice that files can go missing from the law courts, the one place where Kenyans go for justice. Yet, according to the chief justice, Mr. Bernard Chunga, at the time, Nairobi law courts have reported a total of 500 missing files that year alone. Many more are missing across the country, he admitted (Musembi, 2005, citing a stinking editorial in a widely read newspaper in the year 2001).

It is not possible for any country to achieve good governance under such a situation. Justice will be delayed if case files are missing or lost. Such a situation will provide an excellent environment for miscarriage of justice. Above all, the objective of good governance will be a dream impossible of realization.

2.7 Causes of Poor Recordkeeping in the Judicial Courts

In many developing countries Kenya included, corruption thrives due to lack of or inability of those charged with responsibility of supervising and monitoring government activities to play their role effectively. This supervisory role in the public service needs to

be strengthened. Kenya Anti-Corruption Commission (2004) attributes the following to poor recordkeeping in the judiciary and by extension the court system:

- Informal practices have with time supplemented formal practices either inadvertently or intentionally. This situation has opened room for corrupt practices especially making references to any record or without creating one,
- Other opportunities, for corruption due to poor recordkeeping are manifested through lack of regulations and guidelines, manipulation of records, poor storage and maintenance, inaccurate and unreliable data, loss and delays in records retrieval,
- The poor state of records has also proved to be a hindrance to prosecution of corruption offences due to lack of tangible evidence.

All these in one way or another have undermined the administration of justice not only in Kenya but also other countries of the world where there is also selective application of the law in the court system.

2.8 Records Management and Good Governance in the Court System

Perhaps the most important pillar of good governance is that of transparency and accountability. Public officers must be accountable for their actions. For this to happen, there must be evidence to clearly indicate who is responsible for which action, for example, any theft or loss of public funds. Such evidence, which is almost always in the form of records, is needed in case of recovery of lost and stolen monies or in case of court actions. This really emphasizes the immense importance of keeping records efficiently, and especially financial records.

Yet it is in this very area where the situation is often very unsatisfactory. It then becomes difficult to clearly hold one particular person responsible for loss or theft of funds. And it would be almost impossible to achieve successful prosecution in a court of law. In this country, the reports of the Controller and Auditor General have often stated his inability to successfully carry out the audit function in certain cases as a result of inadequate and poorly kept records. This is not surprising. Corrupt and inefficient public officers will rarely keep comprehensive and accurate records. They know very well that they ought to keep such records but it is to their advantage not to do so (Musembi, 2005). Well-kept records are the greatest friend to good governance. Any government that wishes to be accountable to its citizens must of necessity demand efficient record keeping in all public offices. Otherwise there can be neither justice nor transparency and accountability.

2.9 The Purposes of Good Records Management

There are several reasons why governments need to manage and maintain records properly. According to Piggot (2002) these reasons are:

1. Government rely upon legislative records, court records, police and prison records to preserve the rule of law,
2. To demonstrate accountability to its citizens, a government relies upon policy files, budget papers, accounting records, procurement records, personnel records, tax records, election registers, property and fixed asset registers,
3. The protection of entitlements depend upon pension records, social security records, land records and birth/death records,

4. In providing services for its citizens, a government needs hospital records, school records, and environmental protection monitoring records,
5. In documenting its relationship with other countries, government needs foreign relations and international obligations, treaties, correspondence with national and international bodies, loan agreements etc,
6. Without adequate records, the effectiveness of development projects must suffer. There will be no means of verifying that the development projects falls within acceptable legal, financial and cultural boundaries of a client government. There will be no means to verify that funds for development are used as intended,
7. Lack of records management is directly linked to the persistence of corruption and fraud. Experts in financial management control recognize that well managed records systems are vital to the success of most anticorruption strategies. Records provide verifiable evidence to fraud that can lead to investigators to the root of corruption. Well-managed records can act as a cost effective restraint. On the whole prevention is much cheaper than prosecution.

2.10 Judicial Reforms and Administration of Justice

In Kenya the NARC government in line with it's pledge upon ascension to power in December 2004 was to restore public confidence and trust in the judiciary was to fight judicial corruption as part of administration of justice (radical surgery) headed by justice Ringera. The Ringera committee based on their findings came up with several recommendations among which records management was part them and others directed towards administration of justice, these included;

- Elimination or minimization of delays in hearing and determination of cases;

- Expansion of court facilities countrywide;
- Recruitment of more judges countrywide and
- Ready availability of files and records by expansion of and computerization of court registries and automation of proceedings.

Legal Resources Foundation (2005) noted some of the key critical issues that necessitated judicial reforms in Kenya in the 1990s and were seen to undermine administration of justice were;

- Accessibility to the justice which comprises of geographical access and the cost of litigation,
- Efficiency, competency and effectiveness of the judiciary. The concerns were delays, conflicting judgements which would be attributed to records management issues and
- Guaranteeing access to judgements.

According to the Republic of Kenya Ouko Task Force (2010) on the Final Report of the Task Force pointed out three challenges that really informed reforms as follows;

- complex rules and procedures that undermine access to justice and expeditious disposal of case,
- backlog as delays in the disposal of cases, thereby eroding public confidence in the judiciary and
- manual and mechanical systems of operations that affect efficiency and effectiveness and unethical conduct on part of some judicial staff.

2.11 Access to Justice at Courts of Law

Access to justice has broadly been seen by many scholars as a conceptualized phenomenon. Ngondi-Houghton (2005), mentions that access to justice begins from the inclusion within the embodiment of rights in the law, awareness of and understanding of the law, easy availability of information pertinent to one's rights, equal rights to the protection of one's rights by the legal enforcement agencies, availability of physical legal infrastructure and affordability of the adjudication engagement. The author further mentions cultural appropriateness, favourable environment within the judicial system, timely processing of claims and timely enforcement of judicial decisions.

2.12 Records Management and Legislation in Kenya

The management of public sector records in Kenya are under the docket of the Kenya National Archives and Documentation Service. The Kenya National Archives and Documentation Services was first established by an Act of Parliament in 1965 (cap 19 of the laws of Kenya). The other legislation is the Records Disposal Act (Chapter 14) which was established in 1962 and revised in the year 2009 and is responsible for destruction of court records under the advice of the Director of archives in consultation with the Chief Justice.

The Acts empowers the Director or his assignee to examine and advice on the care, preservation, custody and control of any public records and may approve any institution, whether private or otherwise as a place where records may be deposited, housed or preserved either permanently or temporarily any public archives, or records which have been declared public records.

A study done by Kemoni (2007) in 18 government ministries revealed that KNADS provided records management advice to government ministries but most of them did not implement the advice provided. Other findings from the study were that Cap 19 lacked clear-cut responsibilities for the creators of public records among other weaknesses. The result has therefore been poor, inefficient and ineffective records management practices in the public institutions. Mnjama (2003); Kemoni (2007) attributed the poor state of records keeping in Kenya to the following;

- Failure to hire competent and qualified staff in the area of archives and records management;
- Failure by senior management to establish acceptable records management goals and practices;
- Failure to provide financial and administrative support to those involved in registry work;
- Failure to provide close supervision to those engaged in registry work;
- Emphasis on the introduction of information communication technologies as a means of solving information management problems at the expense of developing paper-based records management system.

On realizing the weakness inherent in managing public sector records, the Kenya government embarked on various measures which could assist in rectifying these problems and one among was that the office of the President and Directorate of Personnel management issued circulars defining the role of the National Archives in the

management of records prior to their transfer to the National Archives proposals to improve records keeping in government ministries and institutions.

2.13 Knowledge, Skills and Competencies of Records Management Staff

The success of any records management programme is directly dependent on well trained and qualified staff in the workplace. Clark (2000) pointed out that in-service training within social service training is recognized as a key means through which staff are provided with the necessary knowledge, skills and competencies to improve overall agency performance and achieve the objectives of social policy. Again it may be argued that the quality of any records management programme is 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 organizations to lack of money or inadequate funding.

Furthermore, Millar (2001), advise that when planning a records management project it is necessary to consider the number of staff needed, the tasks they could undertake, their academic qualifications and their requirements for promotions through a civil service approved structure. Wamukoya (2007) pointed out that bad records management is compounded by among other factors, lack of trained staff in records management who should provide guidance or assistance to institution. Staff training and capacity building is indispensable strategy for motivating staff. Therefore it is important for records management staff to be knowledgeable and skilled in all records management aspects; programmes, legal issues, procedures, policies and standards among others.

IRMT (2004) pointed out in legal and judicial case studies the following aspects pertaining staff;

- The need for consistent and authoritative instructions on the preservation or destruction of court case records in all formats
- The importance of having a high level champion within the courts to promote good practice in records and information
- The need for professionally trained records managers within judiciaries
- The need for formal training and training materials in judicial records and information management
- The importance of having expert advice and guidance available to those with responsibility for records and information management in the courts

2.14 Strategic Initiatives in the Court Processes

2.14.1 Integration of Information Communication Technologies in court processes

The advancements of the 21st century have led to an emergence of many disciplines with great potential to solve existing problem and manage information in a different way (Mbugua, 2012). One such potential area is ICT, which has over the years been increasingly adopted in many processes to avert the problems of inefficient and ineffective service delivery. Inter-disciplinary collaborations have led to a symbiotic relationship between ICT and law through automation of court processes to provide expeditious delivery of justice.

In 2009 the Kenyan Judiciary unveiled a strategic plan with a vision “to be the best judiciary in Africa, setting the highest standards in the delivery of quality justice and

leading in the development of jurisprudence”. This was not going to be achieved without an efficient and reliable system in place. One key strategic objective was to adopt and institutionalize appropriate ICTs and other facilities to improve efficiency in operations where the courts can electronically manage a case from the filing state to its final disposition, while providing information to litigants, advocates and the public through web-based and mobile phone applications (Murungi, 2011)

Marsh (2004) on electronic records implementation pointed out some of the gains to include; allowing on-line case filing to achieve paperless office, save storage space and human resources, allowing immediate access to documents during trial, reduction of backlogs and avoid document counterfeit in the implementation of e-court. Hamid (2010) posited that with ICTs more cases are disposed timely, case management is executed more efficiently and systematically and online services include; registration, case status checking, fees calculation, forms download, automatic reminder of case postponement.

Gouanou and Marsh (2004) alleged that in order to minimize the risks and costs of regulatory and legal non-compliance, litigation, discovery, business inefficiency and failure, organizations need to remove the human element by automating records management via technology. This transformation means removing freedom of choice, enforcing electronic record creation, classification, minimizing duplicate records, systematically archiving and tracking records and amendments, applying retention schedules to dispose records but preserving their access logs, audit trails and meta-data

2.14.2 Establishment of Judicial Service Commission

Other initiatives include the establishment of the Judicial Service Commission under Article 171 of the constitution of Kenya, 2010; the commission is bestowed with bringing sanity in the judiciary. Its key functions include; appointment of judges, prepare and implement programmes for the continuing education and training of judges and other judicial staff, advice the National government on improving the efficiency of the administration of justice among others.

2.15 Challenges Facing Court Records management in Courts of Law

Many challenges have been faced in the process of attaining justice including delays due to misplacement of the case files at the registries (Murungi, 2011). Other scholars have pointed out that security and availability of records in the courts dockets are not made available by the police on time leading to the postponement of cases, missing/misplacement of documents and case records are common in the courts, lack of physical and intellectual control of records (Nabombe, 2012). According to Haider and Saman (2012) indicated that the large quantity of records and lack of human resource give the utmost challenge to the court officials to handle case management effectively. Given such situation, the need for effective court records management system is mounting.

According to the Republic of Kenya Ouko Task Force (2010) on the Final Report of the Task Force pointed out three challenges; complex rules and procedures that undermine access to justice and expeditious disposal of case, backlog as delays in the disposal of cases, thereby eroding public confidence in the judiciary, manual and mechanical systems

of operations that affect efficiency and effectiveness and unethical conduct on part of some judicial staff.

2.16 Chapter Summary

Court records management like other resources is an important factor in the effective and efficient management of organizations regardless of the type of formal business activities they do, since it is the basis upon which effective business implementation of all business operations is realized. The chapter has also provided the theories and models informing the study as well as providing related literature on the two inter-related areas of disciplines. There is clear indication that there are records management gaps generally affecting administration of justice in Kenya which need to be addressed and there has never been any study to combat, hence this study has been carried out to find out root causes and provide remedies.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

This chapter discusses the methodology used in this study. It specifically examined the research methods including the research design, the study setting, population and sampling procedures and data collection instruments. The chapter discusses techniques for data analysis and presentation, and ethical consideration related to the study.

3.1 Research Design

A research design is the overall plan or strategy for conducting the research (Oso and Onen, 2008). According to Kothari (2008) “a research design is the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure.” The research design is the conceptual structure within which research is conducted; it constitutes the blueprint for the collection, measurement and analysis of data.

Boquiren (2003) noted that research design involves determination of the study population and how it is obtained, sampling procedures, the source of data to employ, the techniques of data collection and controls of use, the tools to use and their design and how data will be processed and analyzed.

A qualitative approach was used in this study as it has been clearly noted by Busha and Harter (1980) that qualitative researchers deploy a wide range of interconnected methods endeavoring always to obtain a clear perception of the subject matter. In this study qualitative approach involved the use and collection of a variety of empirical materials

and in-depth interview. This approach allows one to identify recurring practices and meaning in individual's activities. Since qualitative methods focus primarily on what people tell the researcher and what they do, enabling the researcher to understand what is going on and hence it can illuminate issues and suggest possible explanations.

Hancock (2000) observed that in collecting qualitative data one uses direct encounters with individuals, through one on one interviews or group interviews. Qualitative research is therefore designed to tell the researcher how (process) and why (meaning) things happen as they do. It enables the researcher to understand the different meanings that people place on their experiences often delving more deeply into hidden interpretation, understandings and motivation.

This study used case study method by aiming at collecting information from various respondents working at the Chief Magistrates Court in Eldoret with particular focus on investigating how management of court records support administration of justice. The study was done by employing interviews, which were supplemented by observation technique and documentary sources as primary source of information.

According to Neill (2006) a case study attempts to shed light on a phenomenon by studying in depth a single case or unit example of the phenomena in context or holistically. Therefore the study used the case study technique because the researcher focused on the Chief Magistrate's Law Court at Eldoret as a single entity to obtain answers to the proposed research questions.

3.2 Study Population

A population is a group of individuals, objects or items from which samples are taken for measurement (Kombo & Tromp, 2006). This is the total population from which the target population will be drawn from as the respondents or study subjects. Mugenda (2003) further defines a target population as the population to which a researcher wants to generalize the results of the study.

The subjects of this study were drawn from among the staff of Eldoret Chief Magistrate Court working in various sections of the Court (Judicial, Registry (civil and criminal), members of the public (litigants) and advocates representing litigants. Sample of 21 persons were picked from the staff population of 33 in number from the above mentioned sections. This included: Chief Magistrate, 6 magistrates, 6 clerical staff each from criminal registry and civil registry and a records officer/Archivist, 1 executive officer, 10 Litigants who are consumers of court service and present at the court at the time of data collection, finally 9 advocates representing litigants appearing in court at the time of study.

These group of respondents were justified to provide relevant data relating to the study, in that; the magistrates and the executive officers were responsible for decision making, delivery of justice, policy formulation and implementation and overall management of court processes, the archivist and the registry court clerks were mainly involved in records management functions at various stages of their life-cycle and at the same time provided information on the various types and formats of records created and received as a result of business transactions and processes of the court among others. On the other

hand the litigants were direct consumers of the court processes and had to provide information the quality of services and treatment given to them and at the same time gave information on the type of records they relied on their case handling. The advocates were selected because they involved in representing litigants in court.

3.3 Sampling Method

Sampling is the process of selecting a number of individuals for a study in such a way that the individuals selected represent the large group from which they were selected (Mugenda & Mugenda, 2003). In this study non-probability sampling was used which involved census, purposive and convenience sampling to select the respondents. The investigator took census on magistrates, purposively sampled executive officer, records management officer/Archivist, and conveniently sampled the court registries' clerical staff, and then interviewed litigants and advocates up to saturation point.

Table 3.1: Distribution of Sample Size

Target Group	Total Number	Sample size	% of a Group
Chief Magistrate	1	1	100
Other Magistrates	6	6	100%
Executive officer	1	1	100%
Records management officers/Archivist	1	1	100%
Registry clerical staff	24	12	50%
Members of the public		Saturation point	
Advocates representing litigants		Saturation point	
Total	33		

Source: Eldoret Chief Magistrate's Court

3.4 Data Collection Instruments

These refer to the tools used for collecting data. In the context of this study the instruments for data collection were interview schedules which were supplemented by observation and documentary sources.

3.4.1 Interviews

It is a person-to-person verbal communication in which one person (or a group of person) asks the other questions intended to elicit information or opinions (Oso and Onen, 2008). The researcher conducted face-to-face interview with all groups of respondents with the aid of semi-structured interview schedule.

The interview schedule for all the respondents consisted of both open-ended and closed-ended questions. Interview schedule for the first five groups required them to provide data related to various aspects of records management such as policies, strategies for managing court records and administration of justice, budgets and challenges in managing court records and directly or indirectly affect administration of justice. Records management officers were required to provide data related to types of court records, uses, state of court records, policies and procedures, effectiveness of systems and procedures for management of court records and the extent to which court records are used and in supporting administration of justice.

Both records management officers and clerical officers provided the researcher with data related to overall court records management in the government, legal framework for management of court records in Kenya, standards for court records management and strategies adopted to manage court records in the government and the extent to which

court records have been computerized (digitized) in Eldoret chief magistrate's courts. While the members of the public/consumer facing charges as a litigant at the time of the study provided information on their treatment and feelings of the service offered to them by the judiciary staff at all levels and finally the executive officer who gave information on staffing levels and training. The interviews for staff were conducted in their respective offices while those of litigants and advocates were done in the waiting bay as they were waiting to attend or file the proceedings. All their responses were recorded as they responded to the interview questions; the investigator employed impromptu visits to the clerks, magistrates, litigants and advocates and appointments were made for the archivist and the executive officer.

Use of interviews helped to eliminate any conflicts and misunderstandings about the aim and objectives of the study by respondents. The method facilitate flexibility of questions and also allowed for the observation and recording of non-verbal communication, thus improving the quality and quantity of data. This method was of mutual benefit to both the interviewee and interviewer.

3.4.2 Observation

This study in addition to interview used the observation method. Observation implies the collection of information by way of investigator's own observation without interviewing the respondents. The information obtained was related to what was happening at time of data collection and not complicated by either past behavior or future intention or attitude of the respondents. In this study the investigator employed an observation checklist that aimed at collecting data related to storage and handling of records, physical condition of

the registry, registry layout, cleanliness, records control tool, risk management and security of records among others.

Observation method was found necessary because it helped the researcher to collect data on issues and topics that might be uncomfortable to informants to be disclosed and help to note unusual aspects. Observation was also used to clarify inconsistencies that arose between what respondents say and what they do or were actually happening at the court. In addition, it allowed the researcher to obtain data describing physical environment of the tasks. (See **Appendix 6**).

3.4.3 Documentary Analysis

Documentary analysis was used to confirm and verify some of the data collected from the study through the other methods. The researcher reviewed both published and unpublished documents and records to provide information concerning the court records management in support of administration of justice. The documentary sources consulted by the researcher included; government legislative documents– Records Disposal Act (Cap 14) and Kenya National Archives and documentation Service Act (Cap 19), court registers, reports and plans, computer records, letters/memos, The Judiciary Strategic Plan (2009 – 2016), judiciary web-site information, text books, internet sources, among other literature sources. These documents provided useful data that confirmed the views of Slater (1990) who advises that in qualitative research, one should not neglect existing ready-made materials.

3.5 Data Collection Procedures

In order to collect data for the study, the researcher had to sought a research permit from, the National Council of Science and Technology and the Chief Registrar after obtaining an introduction letter from the Dean, School of Information Sciences of Moi University prior to the study, the researcher presented the acceptance letters from the National Council Science Technology and chief registrar respectively to the chief magistrate Eldoret Law Courts for permission before commencing data collection.

3.6 Triangulation for Validity

The research adopted a triangulation method by utilizing qualitative methods of interviews and observation. By combining interview and observation in this study, the researcher overcame some of the deficiencies that arise from employing one method. Furthermore, validity is “establishing correct operational measures for the concepts being studied” (Yin, 1994).

The reliability of a study could be ensured when a later researcher can follow the same procedures, such as the data collection procedures conducted in an earlier research study and come up to the same results (Yin, 1994). To carry out the interviews, the investigator with the guidance and discussion with experts in records management made a number of interview questions to follow in order to obtain relevant information.

3.7 Data Analysis

This part dealt with the organization, interpretation and presentation of the data collected. In the study, data collected was analyzed qualitatively. Oso and Onen (2008) observed

that, data analysis entails separation of data into constituent's parts or elements, or an examination of data to distinguish its components parts or elements separately and in relation to the whole.

The investigator analyzed the responses thematically by categorizing. This was done in consideration with the objectives and research questions of the study. Data interpretation indicated the results, meaning and significance to the problem under study through a logical and critical examination of the findings as obtained after analysis. Interpretations were made as objective as possible to get the true picture of the situation under investigation. Use of tables to quantitatively tabulate frequencies and percentages of respondents and responses were used to arrive at calculations.

3.8 Ethical Considerations

Despite the high value of knowledge which is gained through research, knowledge cannot be pursued at the expense of human dignity (Oso and Onen, 2008). Thus, the issues of ethics are very important in any research undertaking. The major ethical issues of concern for this study were privacy and confidentiality, informed consent, anonymity and researcher's responsibility.

With regard to privacy and confidentiality, the participants had the right to keep from the public certain information about themselves and that all data to be collected was used for the purposes of this study. There is also the factor of informed consent. The researcher sought the participants' consent before proceeding with the study. It was important that the participants decided on their own and voluntarily participated in the study. In

ensuring voluntary participation, the researcher provided the respondents with information on:

- The purpose of the study
- The expected duration of participation and the procedures to be followed
- benefit to the subject or participant
- unforeseen risk or discomfort to the respondents
- The extent of privacy and confidentiality.

These encouraged them for participation. Apart from that all participants were assured of their right to remain anonymous.

3.9 Chapter Summary

This chapter has presented the methodologies, which were used in this study. It has provided the research design and described the study settings. It has also discussed study population, sampling procedures and data collection methods. This study collected primary data and secondary data using interviews, observation checklist and documentary analysis. Approaches used in the presentation and analysis of data have been discussed. Finally, ethical issues relating to the study have been highlighted.

CHAPTER FOUR

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

4.0 Introduction

This chapter presents, discusses and interprets the results of the research findings obtained from the field through interviews with the respondents and also complimented with observation and other relevant documents. Data was collected from thirty five (35) respondents of which sixteen were staff from the Chief Magistrate's Court, ten (10) litigants and 9 advocates. To ensure ease of understanding and explanation of the factors investigated, data was presented, analyzed and interpreted under each section or sub-section in line with the study aim and objectives.

Content and thematic analysis was used to organize data collected through interviews. This was achieved by examining terms and phrases used by the respondents and grouping them into themes. Data from interviews and observations addressing a specific research theme, in relation to the study objectives are presented together to enable collating of research findings. Ethical issues were observed by ensuring respondent's anonymity is safeguarded in that no data was attributed directly to any respondent, but instead respondents' views were presented as they relate to the study.

Data presentation, analysis and discussion have been done according to the following key areas of the study.

- Characteristics of respondents and response rate,
- Business process analysis on the types of court records created and or received and how they are managed,

- Professional knowledge and skills of staff responsible for managing court records at the Eldoret Chief’s Magistrate’s Court,
- Administration of justice and the link between the management of court records and administration of justice,
- Application of information communication technologies in court processes,
- Challenges facing the management of court records and
- Recommendations to improve court records management at Eldoret Chief Magistrate’s Court.

4.1 Characteristics of Respondents and Response Rate

The researcher interviewed 16 respondents out of a target sample size of 21 amongst the court staff and a total of 10 and 9 litigants and advocates respectively. Five (5) respondents were not able to grant interviews due to their in-availability during the data collection period. Respondents were asked about the court they were attending, court registry, their designation/position, years in service, their appearance in court (litigants and advocates).

Table 4.1: Response Rate

Target group	Target sample population size	No. of respondents	Percentage(%) response rate
Chief magistrate	1	0	0
Other magistrates	6	4	10
Executive officers	1	1	2.5
Records officers /Archivists	1	1	2.5
Clerical staff	12	10	25
Members of the public	Saturation	10	25
Advocates	Saturation	9	22.5
Total	40	35	87.5%

Source: Field data, 2015

The table 4.1 clearly shows the target sample population size and the response rate of the study. The response rate was 87.5% as reflected on the table, an observation that indicates a good response rate.

Table 4.2: Distribution of Respondents

Target group	No. of respondents	Percentage(%) contribution
Magistrates	4	11
Executive officer	1	3
Records officers/archivist	1	3
Clerical officers	10	28.5
Members of the public	10	28.5
Advocates	9	26
Total	35	100%

Source: Field data, 2015

Table 4.2 Shows that, there were a total of 35 respondents who participated in the study. The distribution composed of two (4) magistrates and one (1) executive officer, one(1) Archivist, ten (10) clerical officers, ten(10) members of the public (Litigants) and nine (9) Advocates representing litigants. These respondents were seen as holding the highest responsibility towards not only administration and delivery of justice, creation and receipt of court records, management of court records but also utilization of court records and services.

4.2 Business Process Analysis and Records Created/received at the Court

The first objective of the study was to carry out a business process analysis to ascertain the records that are generated and received by the Eldoret Chief Magistrate's Court. This information aimed at helping the investigator to gain knowledge into the activities that the various players in the chief magistrate court were involved in and the records received or created in the delivery and receipt of court services. The objective targeted all the categories of the respondents.

4.2.1. Data Collected from the Magistrates and Executive Officer

When this category of respondents were asked about the business process and activities of the Eldoret chief magistrate court, the five officers stated the courts business activities were purely on administration and delivery of justice to all people regardless of race, colour, gender or status, citizenship among others by providing 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, promote a spirit of teamwork in all their activities, cherish and defend the independence of the Judiciary at large. Other activities which were stated were facilitating and promoting research and teaching, policy formulations, planning, development and implementation of government programmes and day-to-day administration of the court.

It was observed that there was no direct involvement of the magistrate in the day-to-day management of court records. But, they further indicated that they are part of the creators and receivers of records besides having a very crucial role or responsibility in the

implementation of all services, projects and overall leadership of the courts services and the executive officers indicated that they were supervising records management staff and activities as well as administration of the court activities (Senior Executive Officer).

4.2.2. Data from Registry Clerks and Records/ Archives Officers

This category of respondents reported that they were the main players responsible for the systematic control and continued management of all court records at the Eldoret Chief Magistrate's Court. The study noted that the registry clerks and the archivists work under the supervision of Executive officers who doubles up as the administrators of the court activities. These staffs were spread among both civil and criminal registries and the archives. Probing further what exactly entails their activities, they were asked about their daily activities in the court. They all stated their activities as follows; registration of cases and opening of case files, assessing court fees, dispatch of case files to court rooms to commence proceedings, attending to litigants and other clients of the court, retrieval and filing of files after use, updating court records in the legal case system, advising on retention and disposal of non-current court records, give direction to clients and answer enquiries. The investigator observed that both the civil and criminal registries were the reception points of the court where the clerical staff could serve the members of the public, lawyers, the magistrates, and the secretarial staff.

The researcher found out that the archivist is in-charge of clerical court staff, responsible for implementing the retention and disposal schedules in consultation with the Senior Executive Officer and the Chief Magistrate. Furthermore, it was reported that the archivist oversees other Chief Magistrate's courts in the region; Eldama Ravine,

Kabarnet, Kitale and Kapsabet. Of concern and also observed is that the registry staff reported large accumulation of records in both civil and criminal registry as well as a sizeable daily receipt and creation of records despite a limited space, hence affecting their activities.

4.2.3 Responses from Litigants and Advocates

In order to establish what business did the litigants and advocates had at the court, the investigator interviewed 10 members of the public (litigants) who were present at the court at the time of the study period. The responses indicated that 80% were following their ongoing proceedings which were mainly criminal and/civil and the remaining 20% were registering their cases for the first time. Two of the litigants out of ten stated that they were there over family property sharing disputes and succession matters.

Of the nine advocates who were interviewed, six (66%) of them were hired by litigants to represent them in handling their cases, four of these were dealing with civil cases and two criminal cases while the remaining 34% of the advocates said that they were hired by the government to represent them in criminal cases of litigants who would neither know nor afford the services of an advocate. They explained that it was the responsibility of the government to provide legal representation to its citizens when need arise.

The researcher learned that court records were created as a result of different cases brought by members of the public or any other party with disputes in court. The cases were presented in court in the of form crime, civil or probate among others after they went through various activities namely; case registration, opening of files, taking

statements, hearing and mention proceedings to be undertaken by the various players among them magistrates, court clerks, advocates and archivist etc.

4.2.4 Types and Formats of Court Records Generated/received and their Management

To ensure justice for all the judicial personnel and their clients/litigants there is need for quick access to well maintained and up to date court records. In this connection the magistrates, executives' officers and archivist/clerical officers at the Eldoret chief magistrate court were asked to indicate the types and formats of records generated and/or received as they transacted official business of the court. The advocates representing litigants were not required to respond to this question but rather they were mainly required to state the records that they relied on in the process of adjudicating court cases.

Based on interview responses five (31%) out of 16 respondents indicated four (4) categories of records as administrative, financial, personnel and judicial. Pressed further, ten (62.5%) of the respondents pinpointed judicial records as the main court records created and received at the court. Eleven (69%) respondents comprising archivist, clerical officers, magistrates and executive officer went further to explain that court records comprised of civil, criminal and probate. These three major types of records as established by the investigator consist of registers, diaries and case files.

Concerning the formats of the court records, all the 16 respondents pointed out that they have both paper based and electronic formats. They further indicated that an ICT section is in place charged with electronic formats and is responsible for managing an online cause list, generation of reports, updating the position of cases from initiation to

disposal/determination; they also indicated that there is a central typing pool for typing court proceedings after a court session and on clients' request. Fifteen (15) out of the sixteen (16) respondents indicated that paper based format is predominantly in place. All the sixteen (16) respondents pointed out that the courts received criminal records which comprised of affidavits, miscellaneous applications, charge sheets, statements and civil records received include; affidavits, complaints, succession records, divorce records, originating summons, miscellaneous, defences, witness statement, exhibits and defendants supporting documents among others.

Following receipt and registration of cases in the court, several records are generated depending on the various categories of records. All the 16 respondents pinpointed creation/opening of registers, diaries, case files, succession file, correspondence, proceedings, memorandum of appearance, notices, circulars, payment receipts as the major records created. Four respondents went further to state that; judgments', charge sheets, awards, proceedings, minute books and executions are other some of the records created by the magistrates.

In order to understand how the activities of the court support administration of justice, the litigants and the advocates were asked to state what records they relied on in arguing their cases in court. All the nineteen (100%) respondents stated that they relied on the three types of records namely; records received by the court during filing the case; records created during mentioning; and records created during hearing and summons. Other records mentioned included; memorandum of appearance, statement of defence, defendants supporting documents, i.e. listed as copies, list of witnesses and

witness statements, exhibits and even photographs of incidences, court proceedings among others.

4.2.5 Records Management Practices, Policies and Standards that facilitate Administration of Justice at Eldoret Chief Magistrate's Court

The study sought the views of the respondents on what records management practices, policies and standards are in place to facilitate and promote administration of justice. This question targeted sixteen (16) respondents comprising of four (4) magistrates, one (1) executive officer, one (1) archivist and ten (10) clerical officers.

In response they indicated their responses as shown in the table 4.3

Table 4.3: Records Management Practices

Practice	No. agreeing with the practice	Percentage (%)
Create/generated/receive records	10	62.5
Filing and retrieval	16	100
Registration/Indexing	16	100
Arrangement and Storage	12	75
Access and Use	11	69
Maintenance	10	62.5
File movement tracking	13	81
Records Appraisal	4	25
Retention and Disposal	6	37.5
Security of records	7	44
Disaster and risk management	2	12.5

***Multiple responses accepted**

The respondents were asked to indicate the activities that entail these practices and their responses were as follows:

A) Ten out of sixteen respondents indicated creation /generation/receive as one of the activities in records management practice in the courts and it involved opening of case files based on the information from the plaintiff, police, prosecutor or a plaintiff advocate. This case file content includes charge sheet, plea, and a warrant of arrest, summons and evidence. Other information as reported includes trial court, mention and hearing date, case number, year, accused, prosecutor, charge date, and judgment.

B) Registration and indexing was reported by all the respondents as a practice involving accessioning of case files in accession register and assigned case number numerically and chronologically indicating the year of creation/opening for easy reference and filing.

C) Filing and retrieval

All the respondents indicated that this is a daily routine and major activity in the court records management. They further said that it involves filing records separately, on the basis of civil cases and criminal cases in their respective registries, other determinants are dates of creation and number. It was also observed and acknowledged by the respondents that filing is a simple and straight numerical filing system of storing records by year.

It was observed that records were electronically and manually searched and physically retrieved using the case numbers provided on request. The researcher observed that it was a very tedious exercise that takes quite some time depending on the accuracy of the case

file. Ten (62.5%) of the respondents attributed this delay to large accumulation of records in the registries and in- effective manual tracing systems and lack of computerization of the retrieval system. Despite the challenges of retrieval and access, the clerical officers maintained a file movement registers to trace files.

D) Arrangement and storage

The findings 12(75%) of the respondents revealed that the court has five storage areas depending on the type of records created and/or received and the level of sensitivity warranting high security and safe keeping. Furthermore they stated these areas as civil registry, criminal registry, archives storage, executive officer's office and the computerized system.

E) Access and use of court records.

Eleven respondents indicated that this is a common and daily practice of the court in records management and it determines the administration of justice delivery by the magistrates as well as responding to enquiries. When asked who your clients are, most of the clerical officers mentioned advocates, members of the public, the police, prosecutors, the Magistrates and staff themselves.

Eight of the ten clerical officers stated that;

- Access to registers and diaries is limited to court clerks, the police and judicial staff.
- Cause lists are accessible to all persons on requests and are also displayed on notice boards and computer screens at the reception bay.

- Case files and other records are accessible to judicial staff, litigants and advocates for perusal.

The study established that there were weaknesses in this practice; in that court clerks search requested files without being supervised, litigants and advocates peruse case files without strict supervision, there is no formal policy and procedures on access of records other than notices made by the archivist and posted on the public notice board, (contents included issues on access, security, eating prohibited in registries) and finally observed that there is in-availability of rooms and tables for clients to consult records, in this regard such malpractice could cause confusion, disorder and loss of records in the organization.

F) Appraisal and disposition

Six respondents had knowledge of this practice while 10 of them who were mainly clerical officers did not understand what appraisal and disposal was all about. However one respondent indicated that the clerks were exercising appraisal without their knowledge. The appraisal exercise is supervised by the archivist, magistrates and executive officers. The appraisal is not done frequently as reported by one respondent and this confirms why large accumulation of records in the active registries.

It was observed that there has been little determination and selection of records for long term and or destruction leading to a huge accumulation of court records dating back to 1942. While 5 (31%) out of 16 respondents were having knowledge and aware of such legal framework (Cap 14 of the laws of Kenya on court records disposal) available, few efforts have been made to use but with little efforts to dispose records because of the

bureaucracy it involves and the time taken by the chief justice to respond. Section 4 subsection (3) of the Act states that;

‘before destroying any record, book or paper, the court or officer desiring to destroy the same shall – a) give at least three months’ notice in the gazette, of his intention to apply to the Chief Justice for leave to destroy records, together with a summarized description in the notice of the record, book or paper in question; and b) not earlier than three months after the giving of such notice obtain leave in writing from the chief justice to destroy the record, book or paper’.

Four (25%) of the respondents reported that there has been attempts to seek permission from the Chief Justice to destroy records without any response. There was an acknowledgment from one respondent that indeed there was a lot of court records which need to be destroyed.

G) Policies and Standards

A policy guideline gives direction to staff and supports the application of consistent records management approaches by identifying information needed to be created, received, accessed, used and maintained as a record for major business activities of an organization. Respondents who included magistrates, executive officer, archivist and the clerical officer were asked to comment on the existence of records management policies and procedures, they all indicated that there were no records management policies and standards but they had knowledge of the importance of such policies for smooth running of court records management practices. Nine (56%) respondents indicated that they use Public Archives and Documentation Service Act (Cap 19) and Records Disposal Act

(Cap14) of the laws of Kenya as legal and reference documents in the management of court records while the remaining were not aware of any policy.

4.2.6 Importance of Court Records to the Functions of Eldoret Chief Magistrate's Court in Support of Administration of Justice

The study sought the views of the respondents on the importance of court records to the functions of the court in administration of Justice.

The respondents comprised all the target groups namely; the magistrates, executive officer, archivist, clerical officers, litigants and advocates. The respondent's indicated as summarized in table 4.4.

Table 4.4: Responses on the Importance of Court Records

Category of respondent	Number	Responses
Magistrates/ executive officers	5	<ul style="list-style-type: none"> • Easy to access information. • Enhance faster service delivery. • Easy to follow up proceedings. • Important for research purposes. • Court records are important in making judgments, issuing penalties, warrant of arrest etc. • Give evidence of what happen on either part of parties. • Making claims and appeals. • Supporting of claims and accusations. • Determining appropriate judgments. • Protecting the rights of various groups. • Coordinating and facilitating judicial sector reforms and programs. • Promotes accountability and transparency
Clerical	11	<ul style="list-style-type: none"> • Easy access and retrieval of records or case

officers/ Archivists		<p>files.</p> <ul style="list-style-type: none"> • Identification of position of cases. • Facilitate follow-up. • Tracing systems made easier. • Quick and efficient services to the members of the public and other customers. • Facilitate production of reports /statistical returns. • Long term preservation of records. • Promotes accountability. • Reduces delays in cases. • Quick disposal of cases. • Determine court fee and payments. • Enhances security of information. • Reduces unauthorized access to records. • Drafting of court documents.
Advocates	9	<ul style="list-style-type: none"> • Facilitate fast access to information • Making judgments. • Make/prepare appeals. • Follow up of client's case. • Used for making defense. • Provision of services and effective link with stakeholders. • Easy access and retrieval of records • Evidence of awards/payments
Litigants	10	<ul style="list-style-type: none"> • Protecting rights. • Easier access for court session • Support claims and accusations. • Following up of proceedings • Communicates dates for hearing, mention

		(cause list). <ul style="list-style-type: none"> • Make judgments • Act as exhibits in court session • Drawing up appeals in case of dissatisfaction
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From the table above it is very clear from the responses that each category saw court records as very important depending on the position they held within the court system. However, what was common among all groups was the issue of access and retrieval of court's records and/ or information. Availability of court records allowed a court session to take place while their absence could lead to delay or adjournment of a case, hence affecting all stakeholders.

4.3. Professional Knowledge and Skills of Staff Responsible for Managing Court Records at the Eldoret Chief Magistrate's Court

The second objective of the study sought to establish the professional knowledge and skills of staff responsible for managing court records. This objective was directed to the Magistrates /Executive officers and the Archivists/ Clerical officers, Litigants and Advocates.

4.3.1 Responses from Magistrates and Executive Officers

It was established that all the five (100%) respondents had knowledge and skills in records management, four (80%) respondents who were Magistrates reported that they got their knowledge and skills in court records from induction training before they were employed and a bit of it during their formal training. The other one (20%) respondent had his training in other disciplines but they acquired knowledge and skills in records

management through workshops and seminars in Government training institutes organized by the public service.

The study also sought information from the Magistrates, Executives officer and the Archivist on where staff responsible for court records management obtained their professional knowledge and their adequacy. List of options were provided and their responses were tabulated in the table 4.5.

Table 4.5: Magistrates, Executive officer and the Archivist Responses Regarding Professional Knowledge and Skills of Staff Responsible for Managing Court Records (N =6)

Source of training	Number	Percentage
University /college	3	50%
On the job	6	100%
Workshops/seminars	4	67%

N/B multiple responses were allowed

Table 4.5 shows that three out of six respondents reported that the records management staff acquired their knowledge and skills from colleges and Universities, while all (six) the respondents indicated that records staff acquired knowledge and skills mainly on the job training and four of the respondents out of six pointed out that they acquired knowledge and skills through seminars and workshops.

The investigator sought to know from the Magistrates and the Executives officer knowledge on the levels of education of all the records management staff and adequacy

including those who were not part of the respondents. The respondents gave a summary of the size and qualification of each category as displayed on the table 4.6.

Table 4.6; Court Records Staff and their Qualification at Eldoret Chief Magistrate's Court

Staff position	Qualification	Number
Senior executive officer	Degree (Not records related)	1
Assistant Executive officer	Degree (not records related)	1
Senior support staff	Induction certificate	2
Archivist	Diploma	1
Court clerks	K.C.S.E	24
TOTAL		29

Source: Senior Executive Officer's Office

(Note: the above table refers to all staff including those who were not in the sample size but working in court records sections, that is assistant executive officers and senior support staff)

From the table above the study showed that there was a large work force of the staff not having undergone any professional training in records and archives management as indicated by the size of clerical staff, the fact that they undergo seminars, workshops and on the job training was not enough for such a key department of the court.

4.3.2. Responses from the Archivist/Clerical Officers

It was established that two (18%) out of eleven respondents had formal training in records and archives management and thus had knowledge and skills in court records management while nine (82%) out of eleven had basic induction knowledge and skills in records management. The two (18%) respondents who had knowledge and skills in managing court records were long service staff who underwent a diploma training at Kenya Polytechnic, now the Technical University of Kenya, and the other respondent stated that though he is still a clerical officer he has a diploma in records and archives management which he had obtained through self-sponsorship.

The other nine (82%) clerical officers had basic knowledge and skills in records management, which they had acquired through induction, seminars and workshops. The study further revealed that the court clerks are under the supervision and training from the Executive officer who did not have any professional and academic training in records management, other than knowledge and skills gained through seminars and workshops. One respondent out of eleven stated that there is a large workforce responsible for records management without the pre-requisite professional training in court records management and this affected records management practices. The respondent went further to indicate that the current staffing and training levels were inadequate.

4.3.3 Responses from Litigants and Advocates

On the part of litigants and advocates the study sought to find out from the clients whether the services offered to them matched with the knowledge and skills of the court clerks/clerical officers or not. Twelve (63%) out of 19 respondents said records take

too long to be retrieved, and at times file could not be traced. As indicated by five (26%) out of 19 respondents, litigants were sometimes asked to bring copies of receipts. Meanwhile, two (11%) of the respondents indicated that they were satisfied with the services offered by the clerical officers.

4.4 Administration of Justice in Relation to Management of Court Records

The third objective of the study sought to investigate what constitutes administration of Justice and its association with court records. The objective was aimed at all respondents because they were either providers and/or consumers of the justice system. Their responses were as follows;

4.4.1 The magistrates, Executives Officers and Records Staff

The study established that all 16 (100%) respondents reported the following as constituting administration of justice;

- ✓ Personnel - Adequate judicial staff, police, lawyers, prison warden, prosecutors, community elders, advocates e.t.c.
- ✓ Adequate resources and infrastructure - including finances or funding, storage and filing equipment.
- ✓ Respecting the rights of all parties involved in a case regardless of gender, race, colour, age, tribe or geographical location.
- ✓ Free from any form of discrimination.
- ✓ Ready availability of complete, accurate and reliable court records.
- ✓ Prompt provision of judicial services.

Again after probing litigants and advocates on the relationship between administration of justice and courts records, their responses were captured as shown on the table 4.7 based on the choices given to them;

Table 4.7: Relationship between Administration of Justice and Court Records

Relationship between administration of Justice and court records	Number	Percentage
Passing judgment	19	100%
Make reference	10	53%
Follow up proceedings	19	100%
Appeals follow ups	19	100%
Accountability/Transparency	9	47% %
Communication	15	79%
Reduces delays	19	100%
Safeguard rights of people	14	74%
Case overlaps can be tracked easily	12	63%

The study established that there was a strong relationship between administration of justice and court records management as the table above shows all the respondents went ahead to indicate that there is a relationship between the two which are interdependent. A reliable, complete, readily available and accurate case file system is fundamental to the effectiveness of day-to-day court operations and fairness of judicial decisions. The maintenance of case records directly affects the timeliness and integrity of case processing.

4.5 Application of Information Communication Technology (ICTs) in Court Records Management at Eldoret Chief Magistrates Court

The fourth objective of the study was to explore the application of ICT in court processes and activities at Eldoret Chief Magistrate's Court. Responses were received from all the participants in the study. The magistrates, executive officers and archivists/clerical officers were asked if there was any application of ICTs in court processes and activities at Eldoret Chief Magistrate's Courts and they all responded YES. Probing further in what ways the ICTs were used in court records management and administration of Justice at the court, they all responded that they utilized ICT applications in relation to; creation and maintenance of cause lists, updating client dates for hearing and mention, reminders in case of adjournment, communications using telephone extension lines, access and retrieval of typed court proceedings and finally printing of cause lists.

When the researcher asked about other areas of ICTs utilization in court processes and activities to benefit as well as promotion of records management, their responses were as shown on table 4.8.

Table 4.8: Benefits gained in Utilization of ICTs in Court Processes

ICT usefulness	No. of responses
Automatic reminder of case adjournments	15
Uniformity of court procedures, work processes and forms.	15
Standard court procedures and work process to ensure fairness to customers	15
Information security is guaranteed	10

Statistics are generated promptly, facilitate excellent and timely decision making.	15
Case overlapping can be traced easily.	15
Registration of a case takes a short time hence efficiency	15
High productivity	16
Appraisal and disposition	15
Storage and maintenance	15

N/B multiple responses were accepted.

From the table above the respondents gave a 100% impression that ICTs have not been fully exploited other than the current use in maintaining cause lists, case scheduling, retrieval and typing of proceedings, they observed that there was a greater benefit and advantage in the use of ICTs which could complimented the work of stenographers. Two respondents in emphasizing the need for ICTs stated that most of the activities were manual leading to difficulties in accessing and retrieving of court records.

The investigator sought to know from the litigants and advocates whether they were aware of any application of ICTs at Eldoret Chief Magistrate's Court and how it was used. Fifteen (15) out of nineteen (19) respondents were aware of the use of computers to display cause lists for only cases which were new for mention but not the continuing cases. They further stated that such information was displayed within the courts but not online. The researcher was able to confirm this as he noted that only the days cause list was mounted on a computer screen at the reception bay and not anywhere else. While the other four (4) out of nineteen (19) respondents who indicated that they

were not aware or did not know of such ICTs usage were new clients and did not even know how to read and write.

The researcher further sought to know from the respondents (litigant and advocates) regardless of those who said **YES or not aware** to indicate how the court could use ICTs in serving their interests. The responses were captured as per the choices in table 4.9.

Table 4.9: How ICTs could be used to Serve the Interests of the Court

Choices	Number of responses	%
Access and retrieval	19	100
Storage and maintenance	19	100
Ease of tracking case file	15	79
Automatic reminder of case adjournment/status	15	79
Information security is guaranteed	9	47
Availability of printed proceedings	19	100
Easy to identify court rooms	10	53
Reduce delays	19	100
Cause list and time scheduling availed online	12	63
Communication with the court via e-mail	15	79

N/B: Multiple responses accepted.

The study established that all respondents believed that full computerization could serve their interests by providing quick access and retrieval, storage and maintenance , availability of printed court proceedings, reduce delays, meanwhile fifteen (15) out of nineteen(19) respondents agreed that ICTs served their interests in terms of prompt communications, automatic reminder of postponement or adjournment of cases and finally ease of tracking file movement.

Those respondents who were able to read and use ICTs in their work to access information observed that ICTs could serve their interests by availing cause lists and scheduling online and also identifying court rooms as reported on the table. Twelve (12) out of nineteen (19) respondents indicated that they mistrusted the application of ICTs because of security issues. The findings shown on the table indicate that level of education is very important to customers and the court as they enabled them to utilize ICTs.

4.6. Challenges of Managing Court Records

The other objective of the study was to identify challenges facing the management of court records in relation to the administration of justice at Eldoret Chief Magistrate's court. All the thirty five respondents (35) were interviewed to give their views. The study established that all the respondents indicated inadequacy of resources and facilities as a major impediment. Ten respondents (63%) of all the magistrates, executive officers, archivist and clerical officers pointed out that apart from understaffing at all levels; low budgetary allocation by the government had also created an impediment on the court's expansion of registry and records storage areas. Five respondents (31%) further indicated

that the huge backlog of cases at the courts was because of few and erratic transfers magistrates.

Two respondents out of the sixteen court staff (magistrates, executive officer, archivist and clerical officers) interviewed indicated that indeed the Eldoret chief magistrate's court was funded by the government and such funding was often limited while on employment and posting of judicial staff, this was a function of the central government. The researcher observed that the court had two containers in place which were used as registries and filing rooms for both civil and criminal records. One respondent commented the efforts made by USAID which donated the containers as part of the electronic court records management project (legal case management system) at the court.

All the sixteen respondents (100%) pointed out that the volume of records at Eldoret chief magistrate's court was growing enormously and had compounded the space problem despite the earlier limitation of resource availability. Two respondents (13%) pointed out three other causes as; irregular and unsystematic appraisal and disposition of records management practice; long gazettment requirements; and the large number of pending cases due to inadequate magistrates. this had contributed immensely to failure to dispose court records at the right time.

Meanwhile, eight out of sixteen respondents pointed out that records staff were inadequately trained to perform appraisal, retention and disposal of records. This was confirmed by the results of the study which showed that nearly all staff concerned with court records management were of the clerical cadre with high school qualifications,

except for the two executive officers who had degrees but not related to record management and the court's archivist who was trained in records and archives management. Four out of sixteen respondents pointed out that there was no formal programme for training staff other than induction and orientation.

Eleven out of 16 respondents reported difficulties in accessibility and retrieval of records because of large volumes coupled with small and congested registries leading to delays in court processes. While seven (7) out of sixteen (16) respondents blamed the large and congested case files in filing areas for the frequent missing, loss, and misplaced or delay in retrieval of case files. Three out of 16 respondents indicated that the issue of loss or missing case files is orchestrated by lack of integrity and illegal work ethics among members of staff who collude in corrupt malpractices of bribery with litigants and advocates defeating and or the course of justice.

Five out of nineteen respondents (23%) of the litigants and advocates interviewed cited frustrations with the various registries because their files could not be located or found in time to commence proceedings. Furthermore, two litigants complained bitterly of their cases being postponed for more than three months because their files could not be retrieved on time. Three (27%) out of 9 advocates reported that their clients suffered a lot when their witness statements were not found in the case file during their second visit, yet they had submitted and were there during the case initiation.

One out of 10 respondents among the clerical staff pointed out that despite the courts boasting of a hybrid system of records management almost all records management

activities were manual in nature. Conversely there was a breakdown of ICT equipment that was used to maintain cause lists.

When asked if file movement and tracing systems existed in the court, five (31%) out of 16 respondents reported that they were not aware of the existence of a such system while eight (50%) out of 16 respondents pointed out that Eldoret chief magistrates court lacked an effective system with proper tracking tools for tracking the movement of records within the court. One respondent said that whereas file movement slips and tracer cards were used, staff did not adhere to their proper use. Furthermore, the researcher observed that the issues raised were confirming why there was a challenge in terms of access, retrieval and use of court records at Eldoret chief magistrate's court.

Eight out of sixteen respondents reported security and in-availability of an accurate case file system due to dockets not made available by the police on time, investigating officers removing comments of other officers from dockets, and in some instances missing documents and case records in remand case files. Four out of sixteen respondents indicated this challenge had led to postponement of cases leading to delays. The researcher also observed that there was laxity in physical and intellectual control of court records and thus systems were needed to ensure that records were secure and available when needed. Ten (63%) out of 16 respondents indicated that all the storage equipment were ununlockable and posed a great security threat to the records.

Nine (56%) out of 16 respondents reported that there was a serious problem concerning Preservation and conservation practices. The investigator observed that there were no preservation and conservation measures for records. Case files were stored under poor

conditions and on open shelves. Records were bound together using sisal twine to reduce the chances of disorder and loss of records but unfortunately the sisal ended up damaging the records by cutting into the documents.

The case folders and paper used were of poor quality, the bound records were piled into overfilled cupboards/cabinets and open shelves. While records touched the floor at lowest shelf, it was also observed that there was poor ventilation and lack of natural light. Because of these situations most of the records, save for the newly created were worn out and deteriorated. One (9%) respondent acknowledged that preservation and maintenance of case records directly affected the timelines and integrity of a case.

Eleven out of 16 respondents reported lack of policies and procedures for records; they further indicated that they relied on The Kenya National Archives and Documentation Service Act (Cap 19) and The Records Disposal Act (Cap 14) of the laws of Kenya in all activities of records management.

4.7 Recommendations on Improving Management of Court Records

The study also sought the views of all the respondents at the Eldoret Chief Magistrate Court on how to improve records management practices given various challenges discussed above. This was aimed at ensuring that stakeholders owned up to the success of court records management in the administration of justice. Their responses were summarized as follows;

- Creation of a formal court records management policy outlining clear rules and procedures on the management paper as well as electronic records. The policy should spell out procedures all aspects of court records management from creation

to disposal of case files, storage space, access to records, type of media, preservation of information, records security and safety, backup systems, proper tracking and tracing systems, audit trail, disaster recovery plans, training on preservation measures, responsibilities for records managers and provision of clear instructions and last but not least, design and implementation of records retention and disposal schedules;

- Records management processes should be fully computerized in order to improve access and retrieval of information and to avoid duplication. Promotion of the utilization of intranet communication within the court's various systems;
- Professionally qualified records manager and other well trained staff should be employed in the court's registries, coupled with provision of continuous professional development or capacity building to both existing and newly employed staff. This will ensure good records management practices;
- Routine and regular appraisal of records should be done to overcome both storage costs and space problems;
- Collaboration with the Kenya National Archives through the Chief justice so that records management issues can be solved easily;
- Establishment of a court records management framework that conforms with the legal requirements, in line with international best practices;
- Deployment of adequate judicial staff especially magistrates and expansion of the court rooms to allow for quick disposal of cases and elimination of backlogs. Rationalization of transfers of judicial staff such as magistrates which is partly the cause of frequent adjournment.

4.8 Discussion of Findings

The business process analysis of Eldoret Chief Magistrate's Court established that records were generated and received majorly manually except in two areas namely; electronic cause lists and computer typed court proceedings. The study further noted that there is a large accumulation of records resulting from the much business activities of the court. Despite eight most of the respondents among the staff of the court indicating that Eldoret Chief Magistrate Court operates an hybrid system, there is a greater need for the court to fully go electronic for this will provide the most complete evidence of its business processes and paper records will function as convenience. However it is widely accepted that computerization of any records management systems should only be attempted where the manual system is fully effective. Records by their nature do account for activities carried out in the course of conducting business transactions in any organizational set up.

Records are appraised annually by the archivist in consultation with the chief magistrate to determine which records can be transferred or disposed to the archives within the court (awaiting full appraisal) and others remain at the active registries an issue that is compounding the large accumulation of records and needs to be revised

It was also clear that from various responses on the in availability of policies and standards governing court records management, instead, the magistrates/executives officers and the archivist were relying on The Kenya Public Archives and Documentation Service Act (Cap 19) and The Records Disposal Act (cap14) of the laws of Kenya as legal and reference documents in the management of court records at Eldoret Chief

magistrate's Court. It therefore means there were serious gaps which must be addressed for effective management of court records with the aim of supporting the administration of justice at Eldoret Chief Magistrate's Court.

Court records are evidence of official transactions and unless they are well managed, the court will not be able to run its business activities and administer justice effectively. The court should make efforts to train staff from all categories and levels in the management of records and avoid the assumption that records creators, receivers and managers have the pre-requisite knowledge and skills to manage the records that they create/generate and receive.

In availability and incomplete court records affects the outcome of a case, leading to making in- appropriate judgment, therefore administration and delivery of justice is hampered, witness statements and other evidences including material evidence if not well kept and secured will automatically interfere with provision of just services.

It was clear and apparent that the induction training that the magistrates got was relevant to court records management, unlike for the Executives officers, the training they refer did not appear to be specific to court records management but rather general to records management. Moreover it was observed to have gained a lot of experience in their activities. Despite the Executives having this background, it was observed that they oversee the services of records department. Musembi (2004) in his study underscored the need for registry staff to acquire relevant knowledge and skills. The author noted that a registry supervisor who is not adequately knowledgeable in aspects of records management cannot provide the necessary leadership. This study concurs with the

findings of the author given that Eldoret Chief Magistrate Court registries have staff most of whom had not undergone any formal academic or educational training in any information science programme regardless of any level except for the two mentioned above who have diploma.

Full integration of information communication technologies in managing court records and purchase of relevant software applications will provide many attractions that will facilitate efficiency in carrying out records management practices and judicial services. The use of databases and effective case management system and records indexing systems has obvious benefits over the manual system. Never the less to computerize an inefficient system will not remove those in efficiencies and may indeed make them more worse (Dawes, 1998).

Records management policies and standards are tools which facilitate access and long-term preservation of paper and electronic records. There is also a greater need for having a reliable retention and disposal schedule in place which should be used routinely to appraise court records for disposal and permanent retention. Again reducing of bureaucratic processes of seeking permission to dispose records is very important, in order to overcome space problems and meet regulatory and compliance requirements.

Depending on the different stand points of various stakeholders the Administration of justice comprises of staffing, infrastructure, fair treatment and free from discrimination, efficiency of staff, quick disposal of cases, fair judgement, ready availability, accurate and complete records, accountability and transparency and affordable justice system among others. It is worth noting as indicated by these that citizens will have trust and

faith in our courts if the government gives full resource support to administration of justice and collaboration of stakeholders

4.9 Chapter Summary

This chapter presented the findings of the study by giving the analysis and interpretation of data as per the study aim and objectives as stated in chapter one of the thesis. Each objective was dealt with as a theme giving an analyzed data as per the various respondents who were thirty five (35) in number. It is clear from the findings of the study that the various court business activities and processes have a direct relationship and impact in the administration of justice at Eldoret Chief magistrate's Court, administration of justice comprises many stakeholders and a combination of resources. In availability of enough resource ranging from inadequacy of magistrates to lack of trained records management officers, budgetary allocations, expansion of court rooms and registries, appraisal practices and manual systems practiced in place were the notable areas that contribute to large accumulation of records and backlogs at the court.

The study also showed some litigants' dissatisfaction of the court's service in administration of justice because of some of the above challenges which may have delayed or denied the due effective processes of the court. It is therefore important to realize that good court records management practices supported by enough resources could promote efficient and effective administration of justice.

CHAPTER FIVE
SUMMARY OF STUDY FINDINGS, CONCLUSION AND
RECOMMENDATIONS

5.0 Introduction

This chapter presents a summary of the study findings based on the research questions, provide conclusion derived from the data presented in chapter four, finally recommendations to address the shortcomings identified in the study and propose a strategy for court records management and administration of justice at Eldoret Chief Magistrate's Court.

The study was guided by the following specific objectives:

1. To examine through a business process analysis, the type of records created/generated and or received, their importance and how they are managed at Eldoret Chief Magistrate's Court.
2. To ascertain the professional knowledge and skills of staff responsible for managing court records at the chief magistrate's court.
3. To find out what constitutes administration of justice and relationship between the management of court records and administration of justice at Eldoret Chief Magistrate's Court.
4. To explore the application of information communication technologies in court process at Eldoret chief magistrate's court.
5. To identify challenges facing the management of court records and suggest possible solution and possibly propose a records management best practice for management of court records for effective administration of justice.

5.1 Summary of Findings

The foregoing sections summarize the results of the study based on the research questions which were formulated to guide the investigation.

5.1.1 What are the Main Business Activities of the Court and what types of Records are Created and/or Received?

The study findings through a business process analysis established that core business activities of the chief magistrate's court included the following:-

- Administration and delivery of justice to all people regardless of race, colour, gender or status, citizenship among others;
- Provision of an independent, accessible, responsive forum for the just resolution of disputes;
- Preserve the rule of law and to protect all rights and liberties guaranteed by the Constitution of Kenya;
- Promotion a of teamwork in all court activities;
- Cherish and defend the independence of the Judiciary at large;
- Facilitating and promoting research and teaching;
- Policy formulation, planning, development and implementation of government programmes;
- Day-to-day administration of the court;
- Registration of cases and opening of case files;
- Assessing of court fees;
- Dispatch of case files to court rooms to commence proceedings;
- Attending to litigants and other clients of the court;

- Access, retrieval and filing of case files;
- Updating court records in the legal case system;
- Advising on retention and disposal of court records, and;
- Give direction and answer to enquiries.

The study established that both paper-based and electronic-based records were created although paper records were noted to be more predominant especially judicial records comprising criminal records (affidavits, miscellaneous applications, charge sheets and statements) and civil records (affidavits, complaints, succession records, divorce records, originating summons, defences, witness statements, exhibits and defences supporting documents).

The study found out that, following receipt and registration of a case the following records were generated; registers, diaries, case files, succession files, correspondence, proceedings, memorandum of appearance, notices, circulars, payment receipts and manual/online cause list.

5.1.2 What Records Management Practices, Policies and Procedures, Standards and Records Manuals are in Place for Management of Court Records and Information at Eldoret Chief Magistrate's Court?

- Records management practices at Eldoret Chief Magistrate's court involved:
 - Creation/generation and receipt of records;
 - Registration, indexing and accessioning;
 - Retrieval and filing of records;

- Arrangement, storage and maintenance;
- Access and use of court records;
- Appraisal and disposal activities among others.

The study established further that access to diaries and registers was open to all staff of the court and police, while cause lists were open to all interested persons while case files were open to judicial staff, litigants and advocates. However it was noted there was no documented policy on these practices and therefore operations were based on mutual trust and cooperation. The study further noted that the court relied on The Public Archives and Documentation Service Act (Cap 19) and The Record Disposal Act (Cap 14) of the laws of Kenya as their policy documents.

The findings established that Eldoret Chief Magistrate's Court did not have a records management policy manual that outlined policies and procedures, as guidelines for staff on records management issues. The benefits of the records management manual are that it:-

- Defines responsibilities and how duties were shared,
- Provides mechanisms for information sharing,
- Specifies access rights by users and how information is shared,
- Helps new employees to grasp basic records management practices,
- Acts as a useful reference document for in-service training and for registry staff,
- Helps to overcome inconsistencies and irregularities in records management practices.

5.1.3 What is the Importance of Court Records Management in Administration of Justice at Eldoret Chief Magistrate's Court?

On the importance of court records management in support in support of administration of justice, the study noted the following results: ease of access and retrieval of courts records and/or information; making judgments, issuing of penalties and warrants of arrest; protect the rights of various groups; coordinating and facilitating judicial sector reforms and programs; promoting transparency and accountability among judicial staff to the public; enabling availability and communication of authentic records; prevents unauthorized access to records and enhances security of information. It was further established that absence of complete, accurate and reliable court records could lead to delays, in appropriate judgment or unprecedented adjournment of cases.

5.1.4 What Professional Knowledge and Skills do records Management Staff Posses?

It was established that records staff acquired their knowledge from university/college, on the job training or through workshops, seminars and induction. The study further established that over 80% of the records management staff were not professionally trained, but gained some basic knowledge and skills from seminars, workshops, induction and on the job training. Those who were trained had diplomas and there was no evidence of degree holder on records and archives management; the executive officers had degrees but not related to records management; the magistrates had knowledge and skills on records management acquired through induction and some from their professional training. The induction, seminars and workshops offered to records staff were not adequate.

5.1.5 What Constitutes Administration of Justice and its Relationship with Court Records at the Eldoret Chief Magistrate's Courts? How Do Court Activities Rely on Court Records?

The study established that a number of factors constituted administration of justice in the following ways: Adequate resources and infrastructure comprising of (budgetary allocations, storage and filing equipment and adequate court rooms); Personnel consisting of (professionally well trained and adequate judicial staff, police, prison wardens, prosecutors, lawyers and community elders or leaders); Ready availability of complete, accurate and reliable court records and information; Respect for the rights of all parties; Prompt provision of judicial services; Free from corrupt practices, and Legal representation.

The study further indicated that there was a strong relationship between administration of justice and court records management in;

- Passing judgement;
- Communicating among judicial staff and other members of the court, litigants, advocates and other interested parties;
- Appeals follow-up (from lower to higher court);
- Follow up proceedings;
- Safeguarding rights of people, and;
- Tracking and overcoming case overlaps among others.

5.1.6 Levels of ICT Application in the Management of Court Records and Benefits to Administration of Justice

The study established that there was limited application of ICTs in records management at Eldoret Chief Magistrate's Court. It also established that ICTs were applied only in the following areas:

- Creation and maintenance of cause lists,
- Access and retrieval of typed court proceedings and
- Updating clients dates for mention and hearing.

Factors inhibiting application of ICTs in the court were noted to include; the current level of computerization, dependence on donor funding by the government, and the government, lack of funds to acquire hardware and software, the benefits of using ICTs was not well recognized and lack of administrative support.

The findings also showed that with full implementation of ICTs, this could support court processes and records management by ensuring; automatic reminder of case status and adjournment, standard court procedures and work processes to ensure fairness, statistics are generated promptly to facilitate timely decision making, efficiency and effectiveness in registration of cases, quick access, storage and maintenance of records and availing cause lists and scheduling online among others. However, the study noted that there was some mistrust, security issues and technological changes as some of the challenges that affected computerization of court records.

5.1.7 What are the Challenges Faced in the Management of Court Records and How Do These Affect Administration of Justice at Eldoret Chief Magistrate's Court?

Eldoret Chief Magistrate's Court faced various challenges with regard to management of court records. They included:

- Inadequate resources and facilities (staffing, funding, storage space and equipment);
- Inefficiencies resulting from manual records management. This has resulted in large and increasing volumes of records, difficulties in accessibility and retrieval of records.
- Other challenges included non-existence of a formal and documented records management policy and procedures manual as guidelines to guide court records, inadequate trained and skilled records management

Further challenges were noted to include;

- In effective file movement and tracking systems
- Security and un-availability of an accurate case file system
- Preservation and conservation problems

5.1.8 Possible Recommendations for Improving Records Management in order to Support Administration of Justice at Eldoret Chief Magistrate's Court

The study proposed a number of recommendations for improving records management in the chief magistrate court as follows. That the court develops and formulates a court records management policy and a procedure manual covering all aspects of records

management in all formats. Further, that it allocates adequate resources including staffing, facilities etc. Other recommendations included hiring of a records manager and training staff on records management, continuous professional development for existing staff, adoption computerization of all court services and processes, and last, but not least, minimize and rationalize transfer of judicial staff to overcome frequent adjournment of cases.

5.2 Conclusion

Records management is a critical success factor in administration and delivery of justice. Systematic, efficient and organized court records management systems provide comprehensive information for courts to make objective and unbiased decisions. Records that capture various business activities of the court serve as important institutional memory and are critical to efficient justice delivery.

Eldoret Chief Magistrate's Court as a judicial institution is mandated mainly to offer and facilitate administration and delivery of justice to all people without any form of discrimination, 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, among others. This core mandate and business activities are supported by court records management activities which result in the generation of records in both paper and electronic formats. From the study, it was clear that records were generated as by-products of the courts business transactions and processes. These records an essential asset and the means by which evidence of the past and current decisions, actions, procedures and policies are preserved for future use.

The study findings revealed that there was a strong relationship between administration of justice and management of court records at Eldoret Chief Magistrate's Court. Indeed administration of justice relied mainly on good records management practices as the court discharged its duties to achieve its mandate. This finding corresponds with the views of Duranti (2001) that records play a crucial role in most human endeavors and are essential to all business and social interactions. It has further been stated by Hassan (2007), that an effective records management system guarantee's the accountability and integrity of an organization in the provision of services to the public. It therefore means a reliable and accurate case file system is fundamental to the effectiveness of day-to-day court operations and fairness of judicial decisions.

From the study it was evident that the records management system in place was predominantly manual and the level of computerization insignificant, although the court still boasted of a hybrid system, a view that has been shared by Shepherd and Yeo (2003) that most organizations have a hybrid records system. This state of the records management system may have contributed to various challenges facing the court in terms of delays in access and retrieval of court records as well as storage and space problems, missing files among others. Full computerization could overcome some of these challenges as pointed out by Haider and Samam (2012) that it will save storage space and human resource, allow on-line case filing to achieve paperless office and immediate access to documents. Similarly, Raas (1999) observed that information and communication technology have developed rapidly over the past decade and provided the means to easily capture, store and distribute documents in vast quantities and at an ever increasing speed.

These systems as demonstrated by the study generated judicial records which consisted of criminal, civil and probate and the other records were administrative and financial records which were not under the control of judicial records staff. Various judicial records were generated and received in the course of business as pointed out in summary (section 5.1.1)

The study established that administration of justice comprised of many factors including staffing, infrastructure, fair treatment and freedom from discrimination, efficiency of staff, quick disposal of cases, fair judgement, ready availability, accurate and complete records, accountability and transparency and affordable justice system among others. It is to be noted that citizens will have trust and faith in the courts if the government gave full resource support to courts.

While the study findings established from the interviewees that they were aware of the importance of good court records management in support of administration of justice, the state of court records was poor to the extent that it exposed the court to various challenges and risks. These challenges included: inadequate resources and facilities (staffing, funding, storage space and equipment); manual records management system inefficiencies resulting in large increasing volumes of records, difficulties in accessibility and retrieval of records, missing, misplaced, and lost files; lack of a formal and documented records management policy and a procedure manual as guidelines to guide the management of court records; inadequate professionally trained and skilled records management staff; preservation and conservation problems among others. These findings are similar with views highlighted by other scholars in their studies that despite the

crucial role played by records and records management, many organizations including government departments pay little attention to the management of records (Barata, 2000; International Records Management Trust (IRMT), 1999; Mnjama, 2004; Ngoepe and Van der Walt, 2009 and The World Bank, 2000). Similarly, Wamukoya (2004) states that records storage constraints, staffing levels, training and ownership and awareness of records management hampers efficiency of records management in the Kenyan courts.

In their study Keniga et al (2010) found out that while in-service training programme for adjudicative personnel (court magistrates and judges) were well coordinated, that of support staff (including registry staff were not. Similarly, Kemoni and Ngulupe (2008) attributed the bad state of records management in public institutions to in adequate staffing and lack of in-service training. Again, Githaka (1996) showed that the quality of staff was one of the constraints that hampered the development of records management programmes; this point has also been confirmed by a study done by Johave (2006) who pointed out that creators of records needed to be updated with knowledge and skills necessary to meet the challenges posed by poor records management.

All the above challenges hamper efficiency in the administration of justice and management of court records and therefore there was need to adequately equip the chief magistrate's court with necessary resources ranging from space allocation and expansion to adequate and professionally trained staff among other measures.

From the above findings, it can be concluded that court records management and administration of justice have a direct relationship such that lapses in any of them lead to judicial malpractices thereby undermining administration of justice. It is hoped that the

recommendations made below will go a long way in addressing the identified gaps and challenges.

5.3 Recommendations

In light of the study findings which are presented in chapter four and summary provided in chapter five, the study came up with recommendations as outlined below and which could be taken up by the JSC as the agency responsible for the management of the court system by advising the national government on improving the efficiency of the administration of justice, prepare and implement programmes for the continuing education and training of judges and other judicial staff records management staff included.

5.3.1 Budgetary Allocation

One of the study finding was that Eldoret Chief Magistrate's Court was not well endowed with enough resource. The budgetary allocation by the government was limited and this had affected the establishment of infrastructure and other facilities including; expansion of court registries and putting up of a purpose built record centre for semi-current records and be able to overcome space and storage challenges. The study recommends that the judiciary through the Judicial Service Commission in liaison with treasury to urgently review budgetary allocations to the records management docket at the Eldoret Chief Magistrate's Court and also other courts in the country if the state of records management is to improve.

5.3.2 Staff Rationalization

It was clear from the study findings that there was shortage of staff in nearly all sections, worse for the magistrates who were only seven in total while on the part of records management there was only one trained personnel. Adequate staffing, rationalization of magistrates and reduce frequent transfers could reduce case backlog and pending cases, hence issues of delays in disposal and determination as well as adjournment of case will be a thing of the past. The executive officer under whom the archivist works must work together to prepare comprehensive budgets and determine staffing levels and quality for records management. The top leadership of the judicial courts in Kenya must appreciate the role of court records in administering justice as supporting all the activities of the court. Chief Justice together with the JSC should address these issues.

5.3.3 Development of Records Management Policies and Procedures Manuals

One of the major findings of the study was lack of records management policies and procedures. Because of this, the court had experienced cases of poor tracking of records, delays in access and retrieval of case files, and poor scheduling of records. This study therefore recommends the development and implementation of a formal court records management policy manual outlining clear rules and procedures of records control. The policy manual should clearly spell out various procedures on all aspects of court records management. The policy should further define responsibilities of records staff as well as judicial staff. There is need for the court to hire expertise or in the meantime seek the service of a consultant to come with policies and procedures and at the same train the existing staff on this area.

5.3.4 Hiring of a Professionally Trained Records Manager

The study findings established that the court records management section was headed by an executive officer without any professional records management qualifications and was deputized by a diploma holder in archives management. This lack of expertise in records management exposed the court to many challenges as already stated in the summary of findings. The study recommends recruitment of a records manager at Eldoret Chief Magistrate's court to take charge of the docket. Once appointed the manager will spearhead the development of records management policies and other procedures, conduct records surveys and appraisal of court records, draw budgets and determine staffing levels for records staff as well as participate in decision making processes at management level. Recruitment of a records manager to oversee the activities of court records management in the court will provide technical and professional leadership that is currently lacking.

5.3.5 Full Computerization of Court Records

One of the key findings of the study was that court records management activities at Eldoret chief magistrate's court were predominantly manual in nature despite the existence of a court records management system. This not only undermined the work of court registry staff and judicial services, but also the rights of other stakeholders. In order to overcome this challenge and ensure justice is not delayed or denied, this study recommends that Eldoret chief Magistrate's Court immediately take steps to improve the state of its manual records and thereafter embark on computerization of its record keeping system. Court records management activities need to be fully computerized to allow on-line case filing and safe storage of records. Computerization will further

facilitate efficient access and retrieval of court files and processing of judgements. Eldoret Chief Magistrate's Court already has an electronic court case management system which has not been fully utilized. This system could form the basis of computerization.

5.3.6 Records Management Staff Training and Capacity Building

The study established that most of the staff were not professionally trained and relied on workshops, seminars and induction programmes. The court lacked a champion to promote good records practices. The study recommends continuous training of records staff and creation of opportunities for career development to endeavour skills.

5.3.7 Benchmarking

Most of organizations in the region are still lagging behind in the area of managing Court Records and therefore it is also recommended that the ECMC should benchmark itself with other well established organizations locally and regionally by visiting to some of those organizations which are already established

5.4 Proposed Strategy for the Management of Court Records in Support of Administration of Justice at Eldoret Chief Magistrate's Court

The study proposes a strategy that may be used to improve and ensure good court records management in support of administration of justice at Eldoret chief magistrate's court. The strategy suggested is based on the research findings and recommendations. These include: inadequate resources (staffing, budgets, ICTs and equipment/facilities); lack of policies and procedures; untrained workforce; ineffective retention and disposal of court records, among others. The proposed strategy is aimed at ensuring that:

- court records in all formats are managed efficiently and effectively using approved records management policies and procedures;
- there is efficiency in the conduct of court processes with the support of sound record keeping systems resulting in improved delivery of justice to citizens;
- the court is compliant with both legal and professional records management requirements and/or best practice;
- there is a professionally and well trained and adequate personnel who understand the importance of records management in the execution of court processes and the delivery of justice;
- there is availability of a records retention and disposal program to regulate the retention of vital court records and the destruction of ephemeral records.

The proposed strategy as shown on figure 5.1 summarizes seven key elements of the strategy which addresses the identified gaps as per the findings of the study.

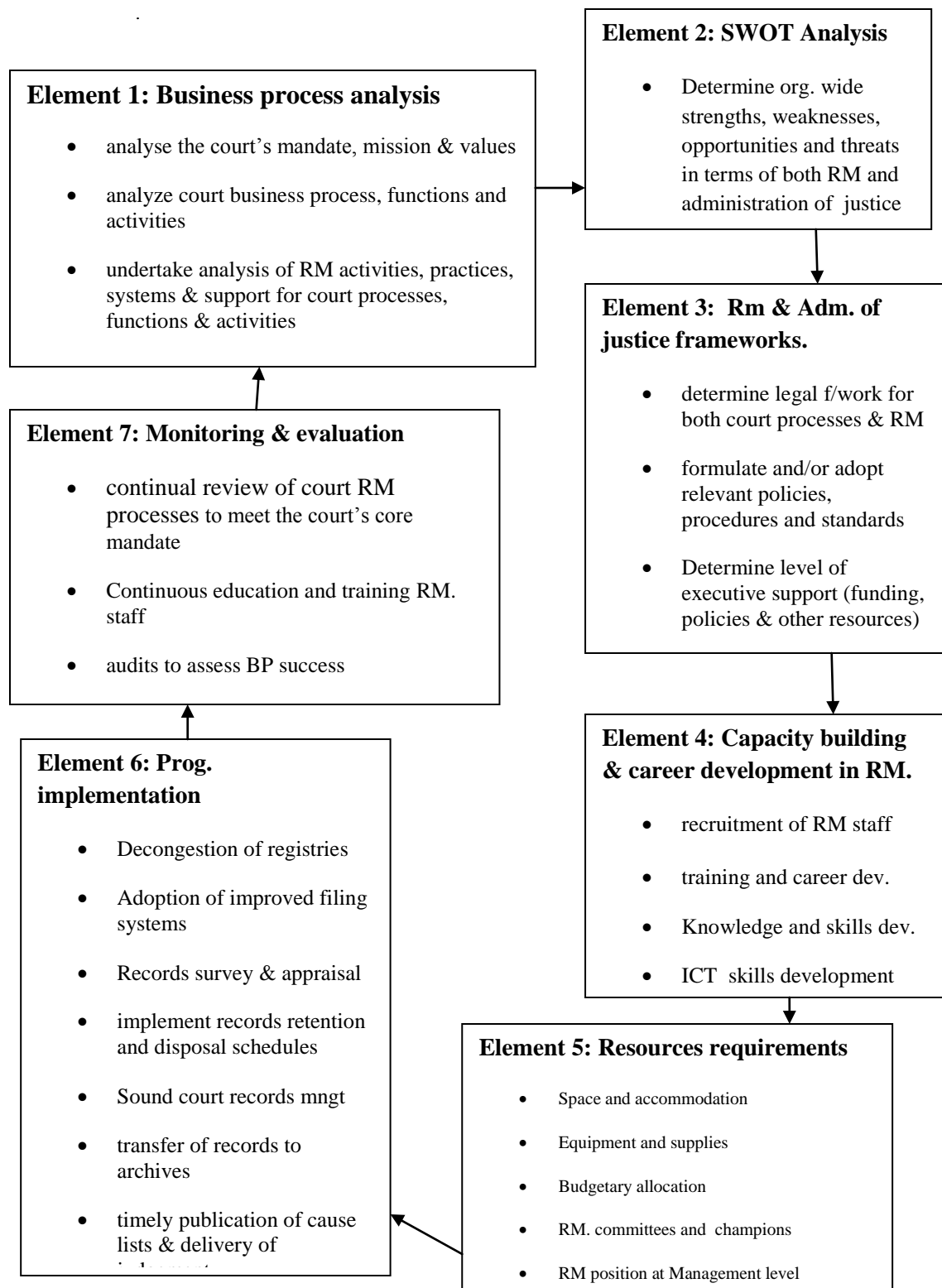


Figure 5.1: Proposed Court Records Management Strategy in Support of Administration of Justice at ECMC

Source: Researcher's own conventionalization

5.4.1 Element One: Business Process Analysis of Court Processes

This element is aimed at determining the court's mandate, mission and values as well as business process by;

- analyse processes, functions and activities;
- establishing the records required to support court processes, functions and activities;
- determining records generated by the court processes, functions and activities;
- determining the contribution of court records to rule of law, and
- determine responsibility for the management of court records.

The Chief Magistrate should appoint a team comprising of the archivist, executive officer, a magistrate, an ICT staff, Clerk and any other two staff from other sections to carry out this exercise

5.4.2 Element Two: Conduct a SWOT Analysis

This element is aimed at understanding the practices both records management and the justice system (rule of law) at the chief magistrate's court. This is achieved through establishing the strengths, weaknesses, opportunities and threats (SWOT) that were obtained at the court. The study findings indicated that Eldoret Chief Magistrate's Court in its endeavours was affected by both internal and external factors which were established in line with the SWOT analysis as follows;

- The strengths included: legal and constitutional frameworks, trained judicial staff (magistrates), judicial independence, availability of court rooms, separation of powers, and availability of ICT infrastructure, among others. Other strengths

were the promulgation of the country's new constitution in August 2010 which had resulted in various reforms being undertaken to improve the rule of law and ensure protection of citizens' rights through the bill of rights and integrity of public officers

- The weaknesses included but not limited to: backlogs of cases, judgement delays, corruption among judicial staff, poor scheduling of court cases, shortage of magistrates, congestion of records resulting from limited storage space and frequent adjournment of cases, high number of untrained records management staff, bureaucracy and lengthy approval time for disposal of records leading to long retention of records and untimely disposal of ephemeral records, lack of records management policies, procedures and standards, misfiling and loss of files, poor tracing systems etc. These were noted to have diminished the ability of the court to achieve its mandate.
- The opportunities were; availability of enough space for expansion of court rooms, ICT expertise, well structured judicial system, proximity to the Eldoret High court, availability of training programmes and institutions within Eldoret town and support from external partners such as USAID and others.
- Promulgation of the new constitution also provided an opportunity for the court system to address various weaknesses and clean up its image
- The threats and risks were noted from the findings to include; corruption and bribery among staff and litigants, interference from the executive arm of the government, lack of public confidence, understaffing and untrained personnel,

inadequate funding, erratic transfers of staff resulting in adjournment and delays in disposal of cases, self represented litigants, among others

This analysis serves to provide a direction of improvement and solutions to the threats and weaknesses that limit the success of the court in delivering of justice. The Chief Magistrate in consultation with the Chief Registrar and with the blessings of the Chief justice together with JSC procure the services of a consultant who has the knowledge of strategic and organizational planning.

5.4.3 Element Three: Development of Records Management and Administration of Justice Frameworks

This element aims to provide and an authoritative and well structured approach as well as documented processes that should be approved by the judicial top management in order to facilitate delivery of justice and the rule of law in an organized, professional, transparent and accountable manner. The study, acknowledged the existence and use of the record Disposal Act (Cap 14) The Kenya National Archives and Documentation Service Act (Cap 19) of the Laws of Kenya, but which were noted to have inherent gaps and inadequacies that required urgent revision and complimented by:-

- Formulation of sound records management and programmes;
- determination and review of legal frameworks for court processes and records management
- Assignment of responsibilities for records management within the courts;
- Review of procedures for the control of court records in line with best practice standards;

- Formulation and/or adoption of various policies, among them; appraisal, scheduling, preservation, disaster plans, digitization etc, and;
- Seek top management support and approval of records guidelines and funding of programs

5.4.4 Element Four: Capacity Building and Career Development in Records Management

This element aims to ensure that all staff handling records require to be developed, trained and retrained to ensure that they have the knowledge and skills required to manage records in all formats and that the records supports the judicial process as well as the rule of law. It's also intended to ensure that there is a continual education and training for records staff and clear career path for their professional development. This can be achieved through;

- Recruitment and selection of records management with the required knowledge, skills and competencies and who have capacity to be developed through training and re-training to higher levels;
- Inducting records management staff to appreciate the importance of good records management practices in supporting administration of justice;
- development of training programmes, materials and instructions on records management targeting both new and existing staff who need a basic detailed instruction on records management policies and procedures;
- organizing for continuous professional development through conferences, seminars, workshops, in-house training and induction;

- judicial staff to receive training focussed on excellence in court management and administration of justice;
- conducting a formal annual performance review and training needs assessment for every employee of the court and;
- establish a change management team to assist with implementation of programs

5.4.5 Element Five: Resources Requirements

This element specifies all the necessary resources for implementing a successful court records management and administration of justice programmes, this is determined and implemented through;

- Budgetary allocation in the annual estimates of capital and running costs for sufficient funds to enable the court system to function properly;
- Ensuring adequate human capital and rationalization of staff at all levels;
- Continual investment in ICTs infrastructure (hardware and software) and procurement of appropriate software and systems for the management of electronic records;
- Establishing adequate storage and accommodation facilities and equipment for all formats of records and enhancement of preservation and security measures records including disaster management, and
- Providing for digitization of records.

5.4.6 Programme Implementation

This element aims to ensure implementation of the proposed strategy as a way of not only achieving sound records management of court records but more importantly ensuring delivery of justice to citizens. Through;

- Established change management team to ensuring:-
 - timely disposal and dispute resolution of cases,
 - decongestion of registries and transfer of records to archives,
 - implement records retention and disposal schedules,
 - adoption of improved filing systems,
 - timely publication of cause lists and prior information on adjournment of cases
- prompt scheduling of cases and timely delivery of judgements;
- sound management of court records in all formats in support of court processes, proceedings and judgements;
- Records management advocacy team to educate and sensitize creators of records, members of the public, advocates and litigants on the importance of records in efficient and effective delivery of justice.

5.4.7 Monitoring and Evaluation

This element ensures that control measures are in place for evaluating programme performance to determine compliance. This will be realized through:

- Routine and regular internal audits to assess business processes and systems efficiency and effectiveness;

- Review and alignment of court records management programs to support the courts mandate, mission, objectives and core values;
- Regular review and revision of all structures, policies, systems and procedures;
- benchmarking the results of the program against international standards and best practices;
- Appointment of a committee of professional staff to constantly evaluate and monitor the implementation of the strategy, its success and continual improvement;
- Measure client satisfaction;
- Embrace current trends in information management and new technologies
- Return to the business process analysis.

Suggestions for Further Studies

The investigator proposes the need for possible future research in the following areas;

- Impact of electronic court records management on administration of justice
- Court records management and e-readiness
- Records management and risk management in law courts

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APPENDICES

APPENDIX I

Interview Schedule

My name is Mark Kisongwo a Master of Philosophy student in Records and Archives Management at Moi University, conducting a research on Records Management and Administration of Justice the study of Eldoret Chief Magistrate Law Courts. this is in partial fulfilment for the requirements for Master of Philosophy Degree in Records and Archives Management.

The aim of the study is to investigate how court records management can contribute to administration of justice with a view to proposing best practice court records management model to enhance the administration of justice at the Eldoret Chief Magistrate Court.

I have identified you as one of the respondents to the study and that any information you provide will be treated with utmost confidentiality

Thank you

Mark Kisongwo

APPENDIX 2

Interview schedule for magistrates and Executive officer

PART 1: general

Court.....

Designation.....

Years in service.....

PART 2: Business Process Analysis

2.1 What are the business activities of Eldoret chief magistrate's court?

2.2 (a) What types of court records are generated and/or received in the course of the court business activities in support of administration of justice.

2.2(b) what specific records or information do you require in order to carry out your duties.

2.2(c) Are there policies and procedures to support court records management? If yes name them

2.3 In what ways are court records important to the functions of the court in achieving its mandate?

PART 3: Professional knowledge and skills of staff responsible for managing court records at the Eldoret chief magistrate's court.

3.1 Where do staffs get their training?

- on the job training
- college or university
- through seminars or workshops

3.2 What are the levels of education of your court records staff? Comment on their adequacy.

PART 4: What constitutes administration of justice and its linkage with court records management in administration of justice at Eldoret chief magistrate's court

4.1 What constitute administration of justice?

4.2 What links exist between court records management and administration of justice?

(b) To what extent do courts activities rely on court records?

PART 5: Application of new technologies in process as activated at Eldoret chief magistrate's court

5.1 Is there any application of ICTs in the court business processes? If yes

I. State these technologies

II. In what ways do these technologies support administration of justice?

PART 6: What are the challenges facing the management of court and what recommendations would you make to improve the situation

5.1 What challenges do you and or the court faces from the management of courts records.

5.2 What improvement would you like to propose in the way court records are managed in order to improve and support this court due process?

APPENDIX 3

Interview schedule for records/archivist and clerical staff

PART 1: General

- 1.1 Courts/station/Registry.....
- 1.2 Position.....
- 1.3 Years in service.....

PART 2: Business process analysis

- 2.1 What business activities do you conduct at the court?
- 2.2 What type of court records are generated and received in the course of your duties/activities.
- 2.2 Who are your clients and what specific records or information do they often ask?
- 2.3 What are the court records management practices in place in ensuring efficiency and effectiveness in administration of justice in this court?
- 2.4 What systems are there to manage records?
- 2.5 What policies or standards are in place for the management of court records?
- 2.6 What specific role do these policies and standards play in safeguarding court records and information?
- 2.7 In your understanding in what ways are court records important to the function and activities of the court?

PART 3: Professional knowledge and skills of staff responsible for managing court records

- 3.1(a) what knowledge and skills do you have that pertain the management of records
- (b) If non, what education and training do you have?

PART 4: What constitute administration of justice and its link with management of court records

- 4.1 What is your understanding of administration of justice?
- 4.2 Who are the players of administration of justice?
- 4.3 In what ways does court records management support the administration of justice in c.

PART 5: Application of ict in the court business process

- 5.1 a) Is there application of ICTs in the court business processes?
- b) if yes, in what ways do they support court records management in the administration of justice.

PART 6: Challenges facing the management of court records at Eldoret chief magistrate court

- 6.1 a) what challenges (if any) do you or your section encounter's in the management of court records.
- b) How do you or your section go about addressing these challenges?

PART 7: Recommendation on the best possible practice to enhance records management in the courts to improve administration of justice

- 7.1 What recommendations would you propose to improve the management of court records in order to import administration of justice?

APPENDIX 4

Interview schedule for litigants

PART 1: General

- A) Gender and age.....
- b) Reasons for appearance in the court.....
- c) Date.....

PART 2: Business process analysis

- 2.1 Please explain your presence in this court?
- 2.2 Which court proceedings or case are you attending?
- 2.3 What records have you relied on in the process of your court case?
- 2.5 Do you think court records at Eldoret chief magistrate court have supported you in handling your current case.(yes or no).
- 2.6 What do you think are the importance of court records management in the administration of justice generally?

PART 3: Professional knowledge and skills of staff managing courts records at Eldoret chief magistrate's court.

- 3.1 i) In your opinion and observation do you think the records staff serving you are well equipped with knowledge and skills to serve you
- ii) Give reasons for your answers above

PART 4: Administration of justice and linkage with court records management

- 4.1 Who are responsible for administration of justice?
- 4.2 What do you think it entails administration of justice in serving you in this court?
- 4.3 a) How long has your current case taken since it was initiated in this Eldoret chief magistrate's court?
- (b) Please give reasons why it has taken the time you have stated in (a) above.

PART 5: Application of ICTs in court business processes

- 5.1 a) Are you aware of any application of ICTs in court business processes at this Eldoret chief magistrate court. Yes/No/Not sure.
- (b) If yes, how has it assisted you in your current case?
- (c) If No/Not sure, in what ways do you think the court could utilize ICT in the handling of your case?

PART 6: Challenges facing litigants in the management of court records and administration of justice at Eldoret chief magistrate's court

- 6.1 (a) What challenges if any have you faced from the Eldoret chief magistrate court or your lawyer that have affected the handling of your case.
- (b) How could such challenges be addressed in order for your case to be fast tracked.

PART 7: Recommendation for improving court records management and administration of justice at Eldoret chief magistrate's court

- 2.1 What recommendation could you propose to improve administration of justice in the court?

APPENDIX 5

Interview schedule for advocates representing litigants

PART 1: General information

- 1.1 Court section.....
- 1.2 Appearing on behalf of defendant or respondent.....

PART 2: Business process analysis

- 2.1 What records have you relied on your part at the court in the process of representing your clients court case at Eldoret chief magistrate's court?
- 2.2 Do you think court records management is important in this court? Give reasons for your answers.

PART 3: Professional knowledge and skills of staff responsible for managing court records at Eldoret chief magistrate's court.

- 3.1 (a) from the services offered to you, do you think the records clerks/officers have enough knowledge and skills to discharge their duties?
- (b) If No which areas are they weak in, and what training could you recommend?

PART 4: The link between court records management and administration of justice

- 4.1 i) what type of case is your client facing in this court? (Criminal, civil, others)
- ii) Who hired you to handle the case before you in this court? (client or government)
- 4.2 i) how long has your client's court case taken since it was initiated in this Eldoret magistrate's court?
- ii) Please give reasons and comment on why it has taken the time you have stated in above
- 4.3 In what ways do you think court records in Eldoret chief magistrate's court have supported or not supported administration of justice in handling your client's case?

PART 5: Application of ICTs in court business process

- 5.1 a) Are you aware of any application of ICTs in court business processes at this Eldoret chief magistrate court. **Yes/No/Not sure**
- (b) If yes, how have they been used?
- (c) If No/Not aware, then in what ways do you think the court could utilize ICT in the handling of court cases? Also give examples of such technologies

PART 6: Challenges facing advocates regarding the management of court records services and administration of justice at Eldoret chief magistrate's court

- 6.1 (a) What challenges if any regarding court records management have you faced from the Eldoret chief magistrate court that have affected the handling of your client case.
- (b) How could such challenges be addressed?

PART 7: Recommendation for improving court records management and administration of justice at Eldoret chief magistrate's court

- 7.1 What recommendation could you propose to improve administration of justice in this court?

APPENDIX 6
Observation Schedule

Observation Target	Observation Criteria	Remarks
Storage and handling of records	<ul style="list-style-type: none"> • What is the environment under which the court records are stored? 	
	<ul style="list-style-type: none"> • What storage equipments are used for court records? 	
	<ul style="list-style-type: none"> • Where do they store the closed court records? 	
	<ul style="list-style-type: none"> • Are the records handled with maximum care and protection? 	
	<ul style="list-style-type: none"> • Do the registries have enough light and ventilation for records and staff? 	
Registry Layout	<ul style="list-style-type: none"> • Does the registry layout provide for sufficient and efficient management of records in the administration of justice and service delivery? 	
	<ul style="list-style-type: none"> • Is the registry located in proper place for effective functioning of the organization? 	
Physical Condition of the Registry	<ul style="list-style-type: none"> • Are the conditions in the registry fit for the purpose of court records management? 	
	<ul style="list-style-type: none"> • If problems are detected in the registry how quickly and efficiently are they attended? 	
Cleanliness	<ul style="list-style-type: none"> • What is the state of cleanliness of the registry? 	
Control Tools	<ul style="list-style-type: none"> • Are all control tools for court records management available? 	

	<ul style="list-style-type: none"> • Are the tools correctly and consistently used? 	
Risk management and Security Measures	<ul style="list-style-type: none"> • Are the registry doors half cut for registry purposes? 	
	<ul style="list-style-type: none"> • Is fire fighting equipments available? 	
	<ul style="list-style-type: none"> • How frequently are they maintained and refilled? 	
	<ul style="list-style-type: none"> • Are staffs trained to operate them? 	

REPUBLIC OF KENYA



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Our Ref: **NCST/RCD/14/013/1086**

Date: **20th June 2013**

Mark Soi Kisongwo
 Moi University
 P.O Box 3900-30100
 Eldoret.

RE: RESEARCH AUTHORIZATION

Following your application dated **13th June, 2013** for authority to carry out research on "*Management of court records in support of administration of justice: The case of Eldoret Chief Magistrate's Court, Kenya.*" I am pleased to inform you that you have been authorized to undertake research in **Uasin Gishu District** for a period ending **31st December, 2013.**

You are advised to report to the **Court Registrar, Eldoret Chief Magistrate's Court** before embarking on the research project.

On completion of the research, you are expected to submit **two hard copies and one soft copy in pdf** of the research report/thesis to our office.


SAID HUSSEIN
FOR: SECRETARY/CEO

Copy to:
 The Court Registrar
 Eldoret Chief Magistrate Court.

Telegrams: "COURT" NAIROBI
 Telephone: Nairobi 2221221
 Email: rmc@judiciary.go.ke



REPUBLIC OF KENYA

REGISTRAR MAGISTRATE'S COURTS,
 JUDICIARY
 P.O. Box 33041-00100,
 NAIROBI

When replying please quote

RE: RMC/GEN.13

26th September, 2013

The Chief Magistrate,
 Eldoret Law Courts,
 P.O. Box 141,
ELDORET.



RE: AUTHORIZATION TO CONDUCT RESEARCH AT EL DORET
 CHIEF MAGISTRATE'S COURT - MARK KISONGWO

The above named is a student of Moi University Eldoret - Reg
 No IS/MPHIL/025/10 pursuing an Master of Information Sciences in Records &
 Archives Management.

Kindly allow him to carry out a research data collection for his research paper
 titled: "MANAGEMENT OF COURT RECORDS IN SUPPORT OF
 ADMINISTRATION OF JUSTICE: THE CASE OF THE ELDORET CHIEF
 MAGISTRATE'S COURT, KENYA."

Caroline N. Kabucho
 DEPUTY REGISTRAR MAGISTRATE'S COURTS



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 Kenya.

Our Ref: IS/MPHIL/025/10

30th July, 2013

The Chief Registrar Judiciary,
 Registrar Chambers,
 P. O. Box 30041
 NAIROBI.



Dear Sir,

RE: PERMISSION TO CONDUCT RESEARCH AT ELDORET CHIEF MAGISTRATE'S COURT

Following the authorization by the National Council for Science and Technology Ref No. NCST/RCD/4/013/1036 dated 20th June, 2013, in reference to our MPhil student Mark Kisongwo (IS/MPHIL/025/10) to conduct research at Eldoret Chief Magistrate's Court and in respect to its response Ref. No. JJD/ELD/CUM/2013, I wish to request your office to grant permission to our student to conduct his research entitled "*Management of Court Records in Support of Administration of Justice: The Case of the Eldoret Chief Magistrate's Court, Kenya*" at the Eldoret Chief Magistrate's Court. The Information given will be treated with utmost confidentiality and will be used only for the purpose of writing the research thesis.

We look forward to continued support and co-operation.

Thank you.

Yours sincerely,

Damaris

DR. DAMARIS ODERO
 SENIOR LECTURER AND HEAD
 DEPARTMENT OF LIBRARY, RECORDS MANAGEMENT & INFORMATION STUDIES

c.c. *Eldoret Chief Magistrate's Court*

DO/mn

