THE CONTRIBUTION OF RECORDS MANAGEMENT TO THE JUDICIARY TRANSFORMATION AT MILIMANI HIGH COURT, NAIROBI, KENYA

BY

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DECLARATION

Declaration by Candidate

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DEDICATION

I dedicate this thesis to my father, Mr. Joseph Waithumbi, and my late mother, Jane Wangari. Their constant support, encouragement and inspiration have greatly influenced my academic life. God bless you.

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ABSTRACT

Records management plays an important role in any judicial system. Indeed, records provide the basis of critical and objective decisions in courts. However, records management practices in the Judiciary of Kenya are not mainstreamed thereby contribute to case backlogs and delays in the delivery of justice. This study investigated the contribution of records management to the Judiciary transformation processes with a focus on Milimani High Court, Nairobi, Kenya. Specifically, the study investigated the types of records maintained at the Milimani High Court; effectiveness of records management practices; available infrastructure to manage records; contribution of records management in supporting the judiciary transformation process; and propose strategies for improving records management to enhance the judiciary transformation process. The study adopted a mixed methods research approach and case study design which involved the collection and analysis of both qualitative and quantitative data. The study was informed by Records Continuum model and Theoretical Transformation model. Data were collected from 63 respondents who comprised judicial officers, court officers, and court users. The data was collected using interview guides, observation checklist and from documentary materials. These were the instruments used to collect data. The quantitative data collected was analysed through descriptive statistics while the qualitative data was analysed thematically. The study found that the contribution of records management to the Judiciary transformation was undermined by poor management of various types of court records maintained at Milimani High Court. The study also revealed poor record keeping practices; lack of a records management policy; inadequate knowledge and skills for linking records to the administration of justice; and insufficient security measures to safeguard the court records. All these undermine the transformation process in one way or the other. The study concludes that records management at the Milimani High Court has not contributed effectively to the Judiciary transformation process due to lack of proper central authority responsible for managing both paper and e-court records; lack of fully-implemented records management policy to guide staff on record management; inadequate records storage equipment; inadequate management of e-records; and inadequately trained records management staff. The study recommends sound record keeping practices of all types of court records to reduce loss of court files and enhance prompt retrieval and dissemination of e-records; approval of the existing records management draft policy to support the transformation process; provision of appropriate records storage equipment; development of human resource capacity to manage paper &digital records; development of a records management programme for both paper and e-records which are created online by registry staff; top management support to facilitate sufficient budgetary allocation to incorporate information and communication technologies (ICTs) in all business processes and implementation of a digital strategy to enhance the transformation process.

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ABBREVIATIONS

CAP10	:	Chapter 10
CCAS	:	Computerized Case Administration System
CCTV	:	Closed Circuit Television
CTS	:	Case Tracking System
DCRT	:	Daily Court Returns Template
ERP	:	Enterprise Resource Planning
ESARBICA	:	East and South Africa Branch of the International Council on
.		Archives
ICT	:	Information Communication Technology
IRMT	:	International Records Management Trust
JFMIS	:	Judiciary Financial Management Information System
JPIP	:	Judicial Performance Improvement Projects
JSC	:	Judicial Service Commission
JTF	:	Judiciary Transformation Framework
JTF	:	Judiciary Transformation Framework
JTI	:	Judiciary Training Institute
KNA&DS	:	Kenya National Archives and Documentation Service
KRA	:	Key Result Areas
MIS	:	Management Information System
NEMA	:	National Environment Management Authority
PMMU	:	Performance Management and Measurement Understanding
RMP	:	Records Management Programme
SD	:	Service Delivery
SJT	:	Sustaining Judiciary Transformation

CHAPTER ONE

INTRODUCTION AND BACKGROUND INFORMATION

1.1 Introduction

Records are vital resources for organisational development. These valuable resources need to be managed properly if the organisations have to grow and achieve their mandate. Records are not only valuable for the preservation of organisations and society's memory; they also contribute to the realisation of good governance and the development of a national identity (Ngulube, 2007). According to Mnjama (2003), records can be defined as assets of interrelated information components that support decision making, coordination and control in an organisation. Wamukoya (1995) argues that the professional practice of records management encompasses techniques, systems, and policies used to enhance the performance of organisations by applying recorded knowledge to make decisions. Records management can also be perceived as the management of the life cycle of important operational information in organisations. Thus, records management enables organisations to create, receive, maintain, use or dispose crucial information about the businesses they transact as evidence for future reference (ISO, 2001).

According to Otieno (2011), the heightened interest in good keeping of records by organisations in the public sector has been necessitated by the need for results-oriented performance. To be able to demonstrate this performance public organisations maintain good records as evidence of their transactions. Furthermore, systems used to keep records enable organisations to maintain and preserve records which are not only authentic but are also reliable and available when needed. If systems are to fulfil these requirements, then appropriate record keeping functions need to be implemented so that records can serve the purpose for which they were created. Effective and efficient

public administration is important to the delivery of public services to citizens. Fox and Meyer (1995) as quoted by Rakate (2006) explain that delivery of services in the public sector entails initiating activities which not only benefit, but also satisfy the citizens. Service delivery in this context, therefore, implies providing both tangible and intangible services to the strategic public's. The Judiciary in Kenya, as in other countries, is a key institution in the provision of services to the citizenry in the form of justice to all.

The State of the judiciary Annual Report (2021) on strategic initiatives for enhancing access to justice, stated that the authority guaranteed under article 159 of the Constitution is exercised in a manner that underpins non-discrimination in service delivery and which strives to minimize delay and procedural technicalities by courts while resolving disputes. This can only be achieved if the registry staff will provide authentic and reliable court records to judicial officers when they are prosecuting the cases in court. These court files contain critical authorities and submissions adduced in court by the litigants and advocates as evidence during the hearing of their matters.

Records management is, therefore, a significant factor in determining success in the Judiciary. Courts need records system which systematically and efficiently deliver information which enables them to make objective decisions (Haider, 2012). Transparent records management systems indirectly prevent corruption, misuse of power and delayed decisions by courts of law. Ngulube (2003) asserts that it is not possible to attain transparent, accountable and efficient public services without effective records management. He associates corruption and loss of confidence in the public service to poor record keeping. Records have been used to Highlight social injustices and repression across the world. According to Uthando (2011), public

officers who manipulate access to information end up controlling public discourse. This is contrary to the spirit of good governance exemplified by truth, social justice and accountability.

Citizens require their governments to be accountable for the decisions they make. Governments, particularly in the developing economies, provide essential public services such as education, social security, health, agriculture and public sanitation, among other services (Yezi Consulting and Associates, 2013). According to Kaunda (2005), increased awareness of the tenets of democratic governance leads to checks and balances which lead to delivery of services which satisfy the needs of the citizens within the stipulated governance structures. Hassan (2007) asserts that records are a strategic resource and an enabler of good public governance. Therefore, fair judicial decisions are only possible when courts of law rely on effective records management systems which generate reliable information for daily operations and decision making. According to the International Records Management Trust (IRMT) (2004), a strong legal and policy framework is necessary for an authoritative, trustworthy and reliable record keeping system. Gouanou and Marsh (2004) argued that automating records management limits human intervention and minimises risks associated with litigation, inefficiency, non-compliance and business failure.

Ngondi (2006:5) mentions that "access to justice begins from the inclusion within the embodiment of rights in the law; awareness of and understanding of the law; and easy availability of information pertinent to one's rights". Roper and Miller (1999:14) reiterate that "within the legal context, records serve several functions such as support for legal rights and obligations within the legal system and the provision of evidence or

proof that a particular activity took place thus contributing to accountability in organisations and in government".

1.2 Background Information

This section provides contextual information about the Judiciary of Kenya. This includes the structure, mandate and services of the Kenyan Judiciary.

1.2.1 The Kenyan Judiciary

The Judiciary is "the system of courts of justice in a country and is the arm of government charged with the responsibility of administering justice". In Kenya, as is the case with other countries, the Judiciary uses the Constitution to resolve disputes, protect people's rights, and guarantee the rule of law. In Kenya, the Judiciary is established as the third arm of the government by Chapter 10, under Article 159-173 of the Constitution (The Judiciary of Kenya, 2014). The Executive is the other arm of the government. It exercises executive power of the Republic. The Legislature, which makes laws is the other arm of the government in Kenya. According to the Presidential Circular No. 1 /2008, the Judiciary independently administers justice and other judicial matters according to its constitutional mandate. The Judiciary is comprised of the technical and administrative units. Courts constitute the technical unit while departments such as finance, administration and human resource form the administrative wing. The courts system in Kenya has the Supreme Court at the apex. This is followed by the Court of Appeal; High Court; Magistrates Courts; Kadhis' Courts, Specialised Courts and Tribunals (Judiciary of Kenya, 2012).

The State of the judiciary annual report (2021) stated that judges and judicial officers are charged with issuing of final judicial decisions in courts. They are assisted by judicial staff who play the supportive and administrative functions. It therefore follows

that having and maintain optimal quantity of judge. Judicial officers and staff is a fundamental ingredient for timely delivery and access to judicial services.

The Judiciary of Kenya exercises judicial authority on behalf of the citizens. According to Chapter 10 of the Constitution, the courts exercise this authority in a way that ensures justice is meted to all regardless of their status; justice is dispensed promptly; and that all legal avenues are pursued in resolving conflicts. According to Article 161, the Judiciary is only subject to the Constitution. Therefore, no person or authority can control or direct the Judiciary. The Judicial Service Commission (JSC) is established by Article 171 of the Constitution of Kenya to oversee the operations of the Judiciary. The commission reviews and makes recommendations on the conditions of service for judicial officers and other staff of the Judiciary. The JSC also advises the national government on how to improve the efficiency of the administration of justice.

Following the promulgation of the new Constitution of Kenya on August 27th 2010, a fourth tier, the Supreme Court, was added to the Judiciary. The Supreme Court is the Highest court in the land. The Judiciary administers justice; formulates and implements judicial policies; as well as compiles and disseminates case law and other legal information for the sole purpose of ensuring effective administration of justice to all.

The Judiciary is expected to resolve disputes justly so as to protect the liberties and rights of all. Thus, they facilitate the attainment of the ideal rule of law (Presidential Circular No.1/2008). Further, the Judges' Colloquium (2011) consented that justice is public confidence in Court decisions. Therefore, the judicial system must ensure an independent, accessible, accountable, efficient, and fair justice which is responsive to the needs of Kenyans. The words "Justice be our shield and defender" are the great

words engraved in Kenyan's National Anthem by the founding fathers of our nation. In the book of Deuteronomy 16:18-20, the Bible states as follows:

> "Appoint judges and other officials in every town that the Lord your God gives you. These men are to judge the people impartially and they are not to be unjust or show partiality in their judgments; and they are not to accept bribes, for gifts blind the eyes even of wise and honest men, and cause them to give wrong decisions. Always be fair and just".

According to the Bangalore Principles of Judicial Conduct (2002), an impartial and independent Judiciary is essential to enable courts to effectively fulfil their mandate while upholding the rule of law and constitutional order. Importantly, the Judiciary should win public confidence in the judicial system.

1.2.2.1 The Supreme Court

This is the Highest court in Kenya which is established by Article 163 of the Constitution. The Supreme Court is composed of the Chief Justice, who is also the President of the Court; the Deputy Chief Justice, who is also the Vice President of the Court, and five judges. The key mandate of the Supreme Court is to adjudicate presidential election petitions. It also hears appeals on decisions made by the Court of Appeal in relation to the correct interpretation and application of the Constitution. It also hears any other cases that the Supreme Court, or the Court of Appeal, certifies as being of general advisory opinion at the request of the national government, any state organ, or government with respect to any matter concerning county governments.

1.2.2.2 The Court of Appeal

The Court of Appeal is established by Article 164 of the Constitution of Kenya. It is presided over by Judges of Appeal. The Court of Appeal has appellate jurisdiction and only attends to appeals from the High Court and any other court or tribunal as prescribed by an Act of Parliament.

1.2.2.3 The High Court

The High Court is established by Article 165 of the Constitution of Kenya. The High Court is the third Highest court. Judges of the High Court (Puisne Judges) preside over the High Court. The High Court is a court of record and has both original and appellate jurisdictions. It hears both civil and criminal cases. Criminal matters concerning murder and treason begin at the High Court. It also attends to appeals from subordinate courts in other criminal cases. The High Court maintains different categories of records including, land and environmental, probate and administration, judicial-review records, civil-appeal, commercial cases related to company disputes and miscellaneous applications filed by advocates for taxing their bill of cost after a case has been concluded.

1.2.2.4 Industrial Court

Article 162(2) (a) of the Constitution of Kenya and the Industrial Court Act, 2011 establish the Industrial Court. It enjoys the status of a High Court. It handles cases relating to employment and labour relations. It took over from courts which operated under the Labour Institutions Act, and which was not on the same level as the High Court.

1.2.2.5 Land and Environment Court

The Land and Environment Court is established under Article 162(2) b in the respect to the environment and the use and occupation of and title to, land. It enjoys the same status as the High Court.

1.2.2.6 Commercial Court & Admiralty

The Commercial Court is a division of the High Court. It is designated specifically to hear and determine commercial disputes. It hears civil cases which are commercial in

nature including; company matters for example, winding up, bankruptcy, charges and debentures; cases relating to intellectual property; claims for the recovery of unsecured debts; tax cases; and breach of contracts. Records emanating from the commercial division of the High Court are sensitive since they involve huge sums of money claimed by the decree holder, hence transparency and accountability must be ensured.

1.2.2.7 Judicial Review Division

Order 53 of the civil procedure rules provides for judicial review proceedings. The records fall under Public Law and are defined as a doctrine under which the Legislative and Executive actions are subject to review (to possible invalidation) by the Judiciary. The remedies available in Judicial Review are certiorari orders, where the original decision is quashed and the public body has to take the decision again; prohibitory orders, where the public body is forbidden from doing an unlawful act in future; and mandatory orders, where the public is ordered to do a specific act which it has a duty to do.

1.2.2.8 Tribunals

Acts of parliament establish tribunals. These are bodies which exercise judicial or quasi-judicial functions. Like courts, tribunals have to respect the Bill of Rights, in their decisions. They should also not be repugnant to justice and morality or be inconsistent with the Constitution or other laws of the land. Pleadings are received from claimants or litigants for the purpose of processing and onward transmission to the courts.

1.2.2.9 Magistrate's Courts

Magistrates' Courts are established by the Magistrate's Courts Act, Cap 10 of the Laws of Kenya. Magistrates preside over these courts. There are several levels of the magistrates' courts hierarchy, with the Chief Magistrates' being the Highest and the

District Magistrates' courts being the lowest. The bulk of cases brought to the Judiciary are adjudicated by these courts.

1.2.2.10 Kadhi's Courts

These are subordinate courts established under the Kadhi's Courts Act, Cap 11 of the Laws of Kenya. They determine cases relating to the personal status, marriage, divorce and inheritance in proceedings in which all parties profess the Muslim religion (Judiciary of Kenya, 2012). Records created in the Kadhi's registry mostly touch on human rights hence there is need to safely maintain them to ensure expeditious administration of justice to all irrespective of status. Cap 14 Laws of Kenya, provides that records touching on matrimonial issues should be preserved permanently after the determination of the case for the purpose of current and future generation.
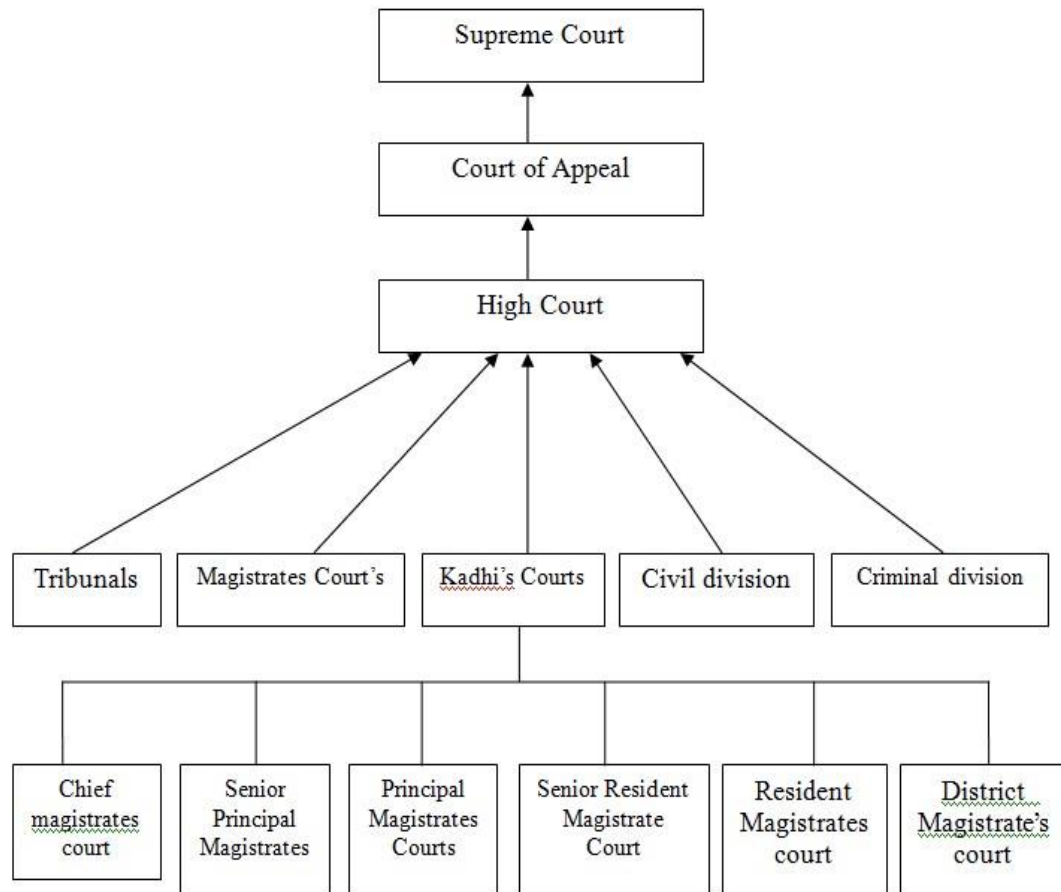
Figure 1 Presents the Structure of Courts in Kenya.
Source: The Judiciary Litigant's Charter (2010)

1.2.2 Kenyan Judiciary Transformation

The Judiciary in Kenya is not perceived as "the faultless handmaiden of justice and guardian of human rights" that it ought to be. Actually, the public has generally been sceptical of the Judiciary right from the inception of the colonial Kenyan State in 1895 to date (Judiciary of Kenya, 2011). The Judiciary Transformation Framework (JTF, 2016) states that the use of the term "Transformation" is not only intentional, it is also necessary. It conveys the sense of urgency in the call of Kenyans to change its practices, norms and structure radically in order to serve the interest of all citizens in the new democratic order. The Judiciary understands that it needs to transform so as to become the legitimate, effective and independent custodian of Justice as per the Constitution. It is also aware that Article 259 of the Constitution (2010) requires it to "interpret it in a

manner that promotes its purposes, values and principles; advances the rule of law and human rights; permits the development of law; and contributes to good governance". Above all, the Judiciary acknowledges that it requires a people-oriented service culture which respects all Kenyans regardless of their "status, sex, creed, race, ethnicity or disability". This framework is the Judiciary's roadmap in that journey of transformation. It is anchored on four (4) distinct but interdependent pillars. The pillars support ten (10) overlapping Key Result Areas (KRAs) derived from the Constitution (2010). The overriding object of pillars and KRAs is to provide access to and expeditious delivery of justice to all.

This can be achieved when registry staff provide court files to clients whenever they need to file documents and more so to avail such files to the judges and deputy registrars to prosecute the cases. Whenever court files are misplaced and are not availed in court on time, this causes delayed justice and this gives a bad reputation to the public. In order for records to contribute to the judiciary transformation, certain issues must be considered. These are;

1. Judiciary must be accessible, efficient and protect the rights of all especially the vulnerable.eg. Citizens must access information held by the judiciary for public use.
2. Court records must be availed to stakeholders promptly so as to achieve transformation agenda.
3. Court files must be well safeguarded (paramount security to be provided) against internal or external access.
4. The judiciary to provide adequate professionals to manage court records from creation to disposition and to ensure best practices are strictly followed.

5. Adequate and modern facilities to accommodate all created records to protect court files from unauthorised access particularly when files are maintained on top of cabinets due to congestion in the registry. This ends up with misplaced records which consumes a lot of precious time for staff while searching for missing files.

6. Constant application of Disposal of court records after reaching their prime time for appraisal. Identification of valuable records for permanent retention must be relocated from the registry to a records centre for permanent preservation. Disposal of court records is guided by Cap 14, Laws of Kenya and this must be strictly adhered to so that worthless records can be destroyed while valuable records can be preserved for research/ knowledge acquisition by current and future generation. More importantly when cases are heard within the stipulated period and judgment delivered promptly these leads to reduced case backlog thus creates more confidence to the public.

- **Pillar one: People-focused, Delivery of Justice**

  The first pillar is founded on Article 159 of the Constitution. This Article states that "while judicial authority is derived from the people of Kenya, it is vested in the Judiciary". It is expected that this delegated authority is exercised in a way that benefits all Kenyans. In this pillar, the Judiciary commits to pursue strategies which create a legal system which ensures equality of all before the law and an equitable legal process. The strategies to be applied under this pillar are clustered in three key result areas:

a) Delivery of access to justice;

b) People centred operations achieved through public engagement; and

c) Engaged stakeholders.

- **Pillar Two: Transformative leadership, organisational culture, and professional and motivated staff**

  There are four key result areas under this pillar:

1) Philosophical and cultural orientation;

2) Leadership and management;

3) Organisational structure; and

4) Advancement of jurisprudence and judicial practice.

The Judiciary has reflected philosophical and cultural orientation of dominance, power, prestige and remoteness over the years. It is less known for to people-centred service and equality. The Kenyan Judiciary needs to recognise its "near-sacred" role as the "temple of justice". While dealing with the public, the Judiciary must realise that the people are not only "the source of its authority but also the target of its service". In fact, it is required by the Constitution to develop jurisprudence; the life blood of any Judiciary. It will only assert its authority, command respect and distinction among its peers, and earn respect and legitimacy in the eyes of the public through sound jurisprudence.

- **Pillar three: Adequate financial resources and physical infrastructure**

  Two key result areas are anchored on this pillar. These are physical infrastructure and resourcing and value for money. The level of investment on infrastructural development by the Judiciary has been grossly inadequate. This is because the Judiciary has received meagre funding from the Government historically. However, the Constitution now grants the Judiciary financial autonomy vide the creation of the Judiciary Fund. This fund needs to be operationalised and managed competently to enable the Judiciary to improve its infrastructure.

▪ **Pillar four: Harnessing technology as an enabler for justice**

Information Communication Technology (ICT) can enormously improve the administration of justice. It is recognised as "a cross-cutting imperative for the pillars of transformation identified in this framework". If properly-harnessed and deployed, ICT can facilitate prompt conclusion of trials thereby enhancing the efficiency and effectiveness of administration processes. ICTs facilitate effective data management, processing and archiving. This guarantees better transparency and fairness in the adjudication of cases and facilitates improved internal and external communication.

Automating court processes, through ICTs, can also enhance public confidence in the judicial process by minimising operational risks such as misplacement or loss of court files. The Judiciary transformation process can only succeed if there is a resolve and commitment of the leadership of the Judiciary to implement it. Internal ownership of the process and commitment of the staff as well as support from the public and other government agencies are also key determinants of its success.

1.3 Statement of the Problem

Progressive organisations make decisions based on verifiable data.Decisions are often based on the intuition of the experts within their respective areas (Comuzzi & Patel, 2016). The decision processes are dependent on several aspects, such as assumptions and context (Diván, 2017) and some on data (Coleman et al, 2016). In addition, the quality of the decision also relies on the process and how it is followed. This data can only be obtained from reliable records. The Judiciary court records support decision-making, accountability, provide evidence of policies, transactions and support the courts in cases of litigation's.The former Chief Justice Willy Mutunga (2012) noted that

Proper records management plays a vital role in making sure that records are kept in a favourable environment and can be retrieved easily and anytime. When records are not readily available, cases of delayed justice delivery and frustrations among members of the public becomes rampant and this creates opportunities for corruption.

Nyakundi (2014) noted that missing files, inaccurate information, missing of key exhibits/authorities from court files and inexplicable delays in rendering counter services to clients are unfortunately, still a common feature in court registries leading to inordinate delays in the delivery of justice. There have been instances when an incomplete file is placed before the judicial officers and unfortunately the hearing of a matter cannot proceed without a complete court file. This leads to delays which prejudice the rights of the parties. Needless to say then, an inefficient registry is a major barrier for the delivery of justice. For instance, poor record keeping practices can result in problems like mutilation of documents, misplaced files by unauthorised access, and poor protection of court files from environmental factors.

However much that the judiciary is craving for public confidence, most of the registries at Milimani High court are in a sorry state. It is sad to note that every once in a while, work is brought to a standstill because a file is missing in the daily cause list for a hearing or a mention before the judge hence the need to first locate such a file This situation leads to delay in administering justice since there is no provision of records that would provide evidence. As a result, justice is either delayed or denied violating the rights of the people. Without proper records management, it is very difficult to account for any decision taken and prosecution of cases becomes difficult. Fraud and dishonesty cannot be easily spotted and be dealt with accordingly if there is no recorded proof.

The absence of a records management policy seems to contribute to poor records practices and delayed transformation whereby tracking of court files is difficult due to poor tracking systems. The registry staff rely on registry manual (2015) which is not adequate in records management programme. Instead, they ought to be guided by the records management policy on when to carry out the case audit and/ or inventory to ascertain the available records so that the missing court files can be traced early enough and filed systematically in the respective shelve or repository. Case files contain information that is sensitive and confidential

Despite the effort made through Judiciary Transformation Framework (2016) Milimani High Court runs the risk of failing to manage holistically and systematically. Nafula (2018) observed that the quest for justice has been hampered by lack of a records management programme which includes policies, physical access to courts, complex and unfriendly procedures, lack of information on court processes and procedures, delays in determination of cases, and alienation from the justice system. This is evident from the High number of records which are not well arranged. According to additionally, the registries are congested with lots of files which are heaped on top of cabinets and on the floor thereby creating a poor working environment for the staff. This is a clear indication that either the storage equipment is inadequate and/or unsuitable for these records. Similarly, the yellowing of documents, dusty and stuffy registries clearly shows that the storage conditions could be a challenge to the proper management of records It was noted that the registries are managed by staff who are not trained on records management while record managers are assigned duties in the archives. This has led to pending cases not frequently retrieved for dispensation by the judicial officers. This has contributed to accumulation of case backlog in the registries causing delay in prosecution of cases. This in turn hampers the administration of justice

to stakeholders and leads to High accumulation of backlogs in courts which may be attributed partly to the poor record keeping practices.

Records contain information that is important and confidential, the issue of misplaced files or lost document, leakage of information clearly shows that there is a laxity in the security of records and this is a risk that needs to be addressed urgently. The court has records essential to the running of the court and if lost or destroyed would seriously impair or disrupt normal business. This might place the organization in fiscal or legal difficulty or might jeopardize the rights of citizens. Delays in determination of court cases can be attributed to poor management of records which often leads to poor service delivery to clients. The staff waste a lot of time looking for misplaced files which is not conducive in the functioning of the court. This has contributed dearly to the delay in prosecuting/finalizing court cases thus, justice delayed is justice denied. Therefore, there is need for proper records management to allow the easy and timely access, retrieval of information, improved office efficiency, productivity and prompt justice delivery.

It is against this background that the study sought to determine the contribution of records management to the much-needed Judiciary transformation with a view to proposing strategies for improving records management in order to spur the transformation and ultimately enhance justice provision at the Milimani High Court.

1.4 Aim of the study

The study was to investigate the contribution of records management to the Judiciary transformation at Milimani High Court, Nairobi, Kenya and to make suggestions for improving records management and contribute to the judiciary transformation.

1.5 Objectives of the Study

The specific objectives underpinning this study were as follows:

1. Establish the types of records maintained at Milimani High Court;

2. Examine the effectiveness of records management practices;

3. Establish the available infrastructure to manage records;

4. Determine the contribution of records management in supporting the Judiciary transformation process; and

5. Propose strategies for improving records management to enhance the Judiciary transformation process.

1.6 Research Questions

The following research questions were investigated by this study:

1. What types of records are maintained at Milimani High Court?

2. How effective are the records management practices?

3. What are the available infrastructure to manage records?

4. How has records management contributed in supporting the Judiciary transformation process?

5. What strategies can be proposed to improve records management to enhance the Judiciary transformation process?

1.7 Study Assumptions

I. Poor records management undermine the Judiciary Transformation process contributing to delayed Justice.

II. If records management is streamlined well, it will ultimately contribute positively to the Judiciary Transformation process.

III. Various factors contribute to poor records management in Judiciary, thus if they are factored well in the system then, justice will be administered promptly to the stakeholders.

1.8 Significance of the Study

The significance of this study is explained in three ways:

1.8.1 Theoretical Significance

The comprehensive investigation is also important in that it is expected to make a contribution to application of records management programmes at the Milimani High Court. The study is also expected to ensure there is top management support who will ensure approval and implementation of records management policy. The top management to ensure they create the post for records management director who will sensitise policy makers on the need to initiate records keeping programmes which create, capture, and make available accurate, reliable and trustworthy records. This will in turn help in providing authentic records to judges and magistrates who deliver judgment thereby reducing case backlog in courts. Similarly, the study is likely to promote the need to comprehensively manage records throughout their life-cycle to enhance their potential to support transformation. It is expected that adequate and modern storage equipment to be availed for proper storage of court records Provision of an offsite location where records identified for permanent preservation are maintained and more so digitization of such records [to reduce wear and tear of the physical files. Staff are likely to regard records management positively and participate in their professional management.

1.8.2 Practical Significance

In supporting the Judiciary transformation process, the growing need for access to information has informed the need for establishing policies on managing paper based and electronic records. The application of records Continuum model in records management will boost access of data contained in the system. Tracking of court files will be fast and also court emails will be accessed and feedback received efficiently. Advocates and litigants will be able to access their cases through the Judiciary website and where they need clarification the service desk will respond to them systematically. The establishment of an electronic records management system will enhance service delivery through speedy access to case information. E-records will include data or information generated by Milimani computer software and systems and stored in databases and other storage devises. E-records management entails the process of creating, accepting and upgrading information and data in accordance to existing regulations. Similarly, e-records management and administrative procedures must ensure that the integrity and authenticity of data and information is maintained and that access is suitably authorised and approved and that it is used appropriately.

1.8.3 Policy-related Significance

This study is expected to contribute to the records management reforms in the Judiciary. For instance, prompt access to justice will be archived due to the fact that registry staff will acquire new knowledge and positive attitude towards better management of court records thus, be able to identify requested records, retrieve and disseminate to action officers. Similarly, such reforms are expected to help the staff to efficiently and effectively disseminate records with hearing/mention dates to judicial officers who would expeditiously determine cases in order to save clients' time. The registry staff to promptly avail authentic court files to clients who come to peruse them whenever

they want to file certificate of urgency applications. The courts will administer justice effectively and thus deliver judgments/ rulings at a minimum time possible saving the clients time Furthermore, sound records management will enhance the security of sensitive documents/exhibits like title deeds and logbooks which are produced in court during the hearing of cases. Such sensitive documents should be kept under lock and key and managed by a specific staff to avoid unauthorised access.

The study is expected to assist Milimani High Court to ensure that their records are well classified and safeguarded from internal or external unauthorised access. This will be archived through provision of an inbuilt records centre where semi active records should be maintained and provision of conducive environment. This will help staff to appreciate sound records management practices which maintain the authenticity of the records they handle. The researcher hopes that the study will streamline the contribution of records management in order to enhance access to justice and improve the rule of law. This will lead to acquisition of new knowledge for better and efficient record keeping practices. The study is expected to assist staff to boost their skills when serving stakeholders, improve the understanding of their information needs and as a result increase their production thereby reducing case backlogs and achieve the transformation process.

1.9 Scope and Limitations

The Judiciary of Kenya creates and maintains different types of court records which includes: court registers, summons, exhibits, administrative files, staff files and case files. This study, however, focused only on court records which are deemed necessary in the administration of justice. Court records are the tools of work of judicial officers. All decisions pertaining to court cases are recorded and filed in case files. Secondly,

although the Kenyan judiciary has many court networks, Milimani High Court was selected because it is the mother of all other courts hence it holds diverse types of cases dating back to 1960 additionally it was the first court to adopt the case tracking system and it also serves the highest number of litigants countrywide. During data collection, some judicial officers were undergoing vetting which was authorized by the judicial service commission, hence they had to reschedule their appointments and on the other hand some of them felt they might be victimized during the interview with the researcher. However, the researcher reassured them that the research was for academic purposes and consequently they promised to freely and fairly participate.

1.10 Definitions of Operational Terms

The following meanings are ascribed to the respective terms as used in this thesis:

Court records

Any documents used during the hearing or trial in court. They are used to argue cases in court and are maintained as evidence of the legal process.

Criminal records

They document information about criminals, criminal activities, suspected criminals and criminal intelligence.

Electronic records

Electronic records are documents which depend on relevant technology to be read. The technology includes computer hardware and software or databases.

Justice delivery

The overall term describing all activities performed in court to deliver prompt and satisfactory legal services which resolve community or citizen problems.

Human resource records

These are records maintained by the human resource department. They contain information relating to staff employment, appraisal and promotions of staff.

Accounts' records.

These are accounting documents emanating from monetary transactions paid to clients or received from clients. They include cheque books, court fees and court fines paid by litigants when they file documents and fines paid by the accused person.

Procurement records.

These are records managed by the procurement department indicating purchase of stationeries, computer equipment, and beverages for use in the office and also desktops & laptops purchased to assist in justice delivery.

Building department records.

These are records maintained in this department emanating from the purchase of building materials and also tender documents. Also the architectural records are maintained here and are accessed when needed in case of renovation exercise these records are retrieved and disseminated to action officers.

Ombudsman records.

These are records which relate to advocates & litigant's requests. These records include litigant's ticket card number which shows the nature of complaint made by the clients. They indicate the name of client requesting information, date the complaint was lodged, status of the case requested and parties therein. Every ticket card contains the next date of appointment and also the judiciary website such that the client can login and request for help.

Legal records

These are documented accounts of actions, transactions, or instruments drawn by an appropriate officer which should be retained as permanent evidence of matters related to them.

Prosecution records

Records created or collected by police officers as they investigate offences or alleged offences.

Public record

A document filed or furnished by a governmental agency and is accessible to the public. For instance, the Alternative Dispute Resolution, State of the Judiciary and The Administration of Justice Annual reports and Magistrate and Kadhi's guide Books.

Record

The formal and documented account of a case. It contains the history of actions taken, papers filed, rulings made, and all written opinions.

Records management

This is the process of developing record keeping systems for capturing, managing, and maintaining records having evidential characteristics for organisational purposes.

Transformation

The processes the Judiciary of Kenya takes to drastically change itself so as to deliver its mandate as enshrined in the Constitution of Kenya, 2010.

Case files

Collection of evidence or documents relating to a legal, medical, or social work case or Collection of documents relating to a particular investigation or in support of some administrative action.

Exhibit

A physical or documentary evidence brought before the jury. The artifact or document itself is presented for the jury's inspection. Examples may include a weapon allegedly used in the crime, an invoice or written contract, a photograph, or a video recording.

Summons

A form prepared by the plaintiff and issued by a court that informs the defendant that they are being sued or are required to appear in court. It may be served by a sheriff or other authorized person, such as the process server.

Court Registers

A register of actions is a book or record that contains all docket entries for various cases pending in a court.

1.11 Chapter Summary

The chapter provided the introduction and background information to the study. It also introduced the issues that the study investigated and served as the basis for subsequent chapters and all other activities conducted during the research. The themes included records and records management as a key success factor in judicial system and justice delivery at the Milimani High Court Nairobi Kenya, background information on the Kenyan Judiciary, the current court structure, statement of the problem, the aim and objectives of the study, research questions and study assumptions. Other issues included significance of the study, scope and limitations of the study and definition of key terms.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

Relevant literature is reviewed in this chapter. According to Marshall and Rossman (2006:42) "literature review is a thoughtful and logical discussion of related literature which builds a logical framework for the research and locates it within a tradition of enquiry and context of related studies". Literature related to the role of records management in support of judiciary transformation at Milimani High Court Nairobi, Kenya is reviewed. The review also links improved administration of justice and service delivery to effective management of records.

2.2 Theoretical Framework

According to Labaree (2013), a theoretical framework is a collection of interconnected concepts, which guide research by identifying issues under investigation and Highlighting their relationships. Theories are unbiased and are anchored on empirical evidence obtained from rigorously conducted scientific research. Theories must make predictions about future behaviour (Abubakar, 2011). Mikkelsen (2005) explains that a theoretical framework is an orientation of perceiving the social world through less abstract lenses. Theoretical frameworks are rich sources of assumptions and explanations of key research concepts. A theoretical framework comprises of "an explicit statement of the hypothesis or theoretical assumptions on which the research is based and the relevant research method that will guide the researcher in his or her attempt to test the assumption - the "why" and "how" of the research" (Herek, 1995:83-93).

2.3 Records Management and Transformation Models

Effective records management practices are anchored on theoretical principles and models. When followed, these principles result in successful records management outcomes.

2.3.1 The Records Continuum Model

The Records Continuum Model, illustrated in Figure 3, was formulated in the 1990s by Upward, McKemmish, Reed and Schauder. According to Chachage (2005) as well as Flynn (2001), it is a better model to manage electronic records. The model stands on four postulates outlined hereunder:

1. Although records have enduring value, their usefulness is derived from the very moment they are created. Similar precautions should be borne whether one is keeping a record for a second or an entire millennium.
2. Records are logical and not physical entities regardless of whether they are in physical or digital forms.
3. There is a dire need to understand that records generate Higher value if they are integrated seamlessly into the core business or societal processes.
4. The concept of records continuum concept graphically frames relationships between professionals and processes of records management.

According to Atherton (1985), concerns about to administrative efficiency buttress doubts about the continuum concept in records management. Records are created to serve both immediate and future purposes. Therefore, no time can be wasted waiting to manage them in the future. In support of this argument, it is worth emphasising that the primary responsibility of any Judiciary in the world is to dispense justice to all citizens irrespective of their status in society. As a state organ, the Judiciary is expected to

accountable, transparent and exhibit good governance and integrity as per the Constitution of Kenya (2010)
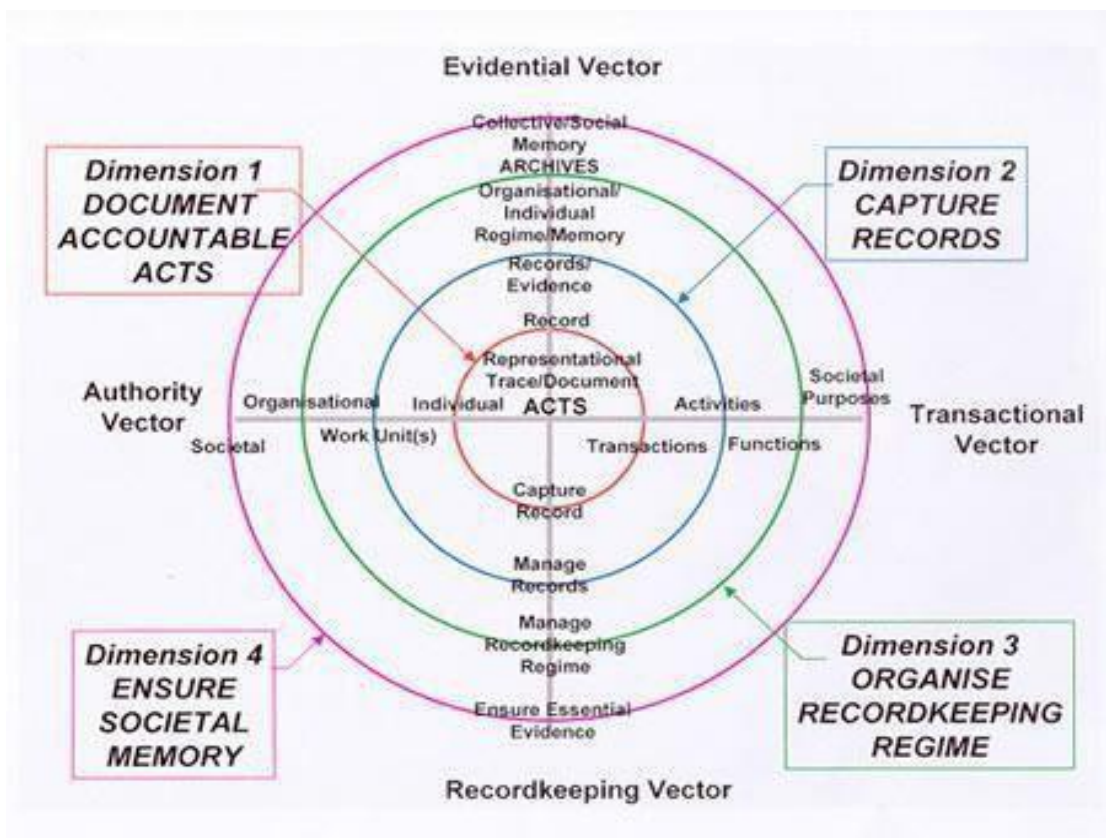
Figure 2: Records Continuum Model
(Source: Upward, 2000)

2.3.1.1 Relevance of the Continuum Model to the Study

Records continuum thinking is applicable to understanding the roles involved in records management. These are discernible in five cardinal areas outlined by Upward (2000) as presented hereunder:

a) Records are instruments of authority which regulate relationships between people and organisations.

b) Record keeping promote accountability in its broadest sense and regulates what people and organisations do to one another.

c) Records support the constitution of institutional memory and serve as sources of tacit knowledge in organisations.

d) Records serve as witnesses and provide evidence of personal and corporate activities thereby creating collective identity.

e) Records provide valuable information which organisations can exploit to enhance operations and processes.

According to Frings-Hessami & Mckemmish (2021) the records continuum model ensures that the records needed to meet societal expectations are created, managed, safeguarded, retrieved, used and preserved so that they are available when needed. They further argued that record keeping encompasses the management of records and archives as well as the setting up of record keeping systems before records are created, to meet the needs of a variety of stakeholders. Ndungi (2018) emphasised that records continuum concept vies the activity of records management as a continuous interrelation of activities. These activities are aimed at achieving efficiency and economy in management of records to ensure that records sufficiently play their role as evidence of transactions in organizations. As a result, they serve the function of accountability and transparency.

Therefore, the usefulness of current and historical business records is intertwined. With respect to the Milimani High Court, records provide a basis for judgments. Additionally, as part of transformation process, the Judiciary has come up with a museum based at the Supreme Court building where the public can visit and go through various records of their interest. Examples of such records are various chief justices who served during the colonial period and after independence as well as records relating to freedom fighters, for example Dedan Kimathi's record. Sir Robert William Hamilton was the first Chief Justice of the Judiciary of Kenya. He was appointed to office in 1906.At independence, Sir John Ainley was the Chief Justice who presided over the

swearing in of the founding president, Jomo Kenyatta (National Council for Law Reporting, 2008).

Computers have redefined the way information is accessed. This has equally transformed the way decisions are made (Oskamp et al., 2004). Digital devices can be used to gather judicial information globally. Similarly, digital devices have enhanced decision making processes by shortening judicial procedures. IRMT (2009) emphasises that the continuum model enables the correct understanding of records as logical entities which are not necessarily physical. Thus, electronic records do not have to exhibit the content, structural and contextual attributes of physical records. The model accommodates all forms of records. In pursuit of the Judiciary transformation process, the Eldoret High Court, digitised its records and conducted a pilot case management which emerged successful. Other courts, like the commercial division in Nairobi, embarked on digitisation of their records. Consequently, the courts have both digital and physical records which they need to manage. This makes the model relevant for the study.

Creation of records is a cardinal part of business operations. Business procedures create and disseminate documents routinely. These documents ultimately turn into records which provide evidence of the transactions. Records also provide valuable memory of actions and decisions (Ngoepe, 2008). Similarly, records enable businesses to remember critical events. Sometimes, organisations are required by law to create and keep specific records for a stipulated period of time. Consequently, Wamukoya (2000:25) emphasises "the need for records and the role of record keeping to operate in three distinct domains" which are demonstrated by the records continuum. These are the business, accountability and cultural domains. Civil division maintains records

related to matrimonial matters/property; family division litigates matters related to the distribution of the property of deceased persons to the beneficiary; the environmental and land matters are filed almost daily hence Cap 14; Laws of Kenya provides that such cases be preserved permanently after their determination.

Succession matters can be concluded today and after twenty years it becomes active again. An example is the probate and administration matter for the late J.M. Kariuki whereby the three widows did not pay the full instruction/advocate fees to the advocate after the determination of the suit. However, the succession case for the late J.M. Kariuki was recently retrieved from the family division archives as proof that the advocate truly represented the family. Every division in the High Court maintains an archive where records with retention value are transferred for research purposes, cultural value or evidential value. All land and succession matters, particularly, are preserved permanently for the current and future generations. Therefore, the records continuum model becomes relevant to the study.

2.3.2 Transformation Model

This model, illustrated in Figure 4, focuses on process elements of records management The model incorporates the records management functions from reaction, access, retrieve, disseminate, use, retain and dispose what is not useful to create space for current records. Record keeping is integrated to operations which lead to effective delivery of justice to all. The judiciary staff are expected to retrieve and avail court files to clients with minimal time used. Security of permanent records should be paramount to ensure they serve the purpose for their creation. Such court records are referred to as authority which are relied upon by litigants to support their matters during the hearing. The key elements of the process are described hereunder:

✓ Receive - entails receiving, identifying and classifying records. The information is received from an originator (litigant/advocate), indexed and stored in the repository to await the parties to take a hearing date in the registry. Payment of the requisite fees is done by the cashier who ensures that an official receipt is issued to the client and date stamp both copies, one for the client and the other for the court for transparency/accountability purposes.

✓ Store – involves identifying the media and location to store information in if the records received are in hard copy, then a folder is prepared with all the particulars of both parties i.e. the plaintiff verses the defendant appearing on the face of the folder, date the case was registered and next action to be taken. And thereafter it is filed in the labelled shelves for easier location, retrieval and disseminate to action officers. If the record received is inform of a flash disk, the disk is stored securely in a fireproof cabinet where the environmental conditions are controlled to prevent the disk from deterioration or loss of information.

✓ Retrieve - accessing stored information using established protocol. Information stored in the computers must be safeguarded from internal/external unauthorized access. This can be prevented by way of installing firewalls and use of password to control access which should be accessed by an authorized staff. For the information contained in the court files access should be limited only to authorized staff who should retrieve requested court files to be cause listed in the judiciary website for clients and stakeholders to access court tracking system has been in use in the judiciary and it assists faster location of records maintained in the system. When the performance department want to appraise or to measure the number of cases a judge has delivered judgment, the system will provide printout of all cases heard

and determined by the judge. The system assists in faster access of data to make prompt decisions.

✓ Distribute –strategically disseminate information to its potential users but within the provided frameworks. Some of the Court users who come to court do request to peruse the file and establish the last orders given in court. When such users appear in court the registry staff must fill the particulars of the client in a designed form which is also signed by the staff after which the client must pay a reasonable amount as court fees to cater for perusal services. Other stakeholders like the Law report usually visit the court to peruse court judgments which have not been reported for public use. The litigants and advocates rely on these judgments as authorities to support their case during the hearing o court cases. This idea of reporting the cases has greatly improved the jurisprudence of the cases. Sharing of ideas through Law reports assist in creation and acquisition of new knowledge, improve the Rule of Law in the society,

✓ Similarly, in line with transformation process the judiciary has come up with the ICT help desk which provides online information to clients who are not able to login and also to advocates requesting for the cause listed matters in the judiciary website. The ombudsman office provides data to clients who seek help particularly when their matters have delayed. Such clients are issued with a ticket number indicating the case number and particulars of the case and his or her personal details so that the registry staff can call the client for feedback. Every division in the High court has a help/customer care desk which directs clients to various registries.

✓ Destroy/Retention of court files. –purging information. Cap 14 and Cap 19 provide for processes and procedures for the destruction of court records. When court cases have been decided and summary of judgement entered in the register, then its

appraised by a records manager to establish the value of the record whether it's supposed to be destroyed or retained, The Laws of Kenya, Cap 14 provides for the destruction of court cases where the conviction is less than one year imprisonment in criminal cases but where the conviction is more than one year the file is retained for permanent preservation to serve the current and future generation.(Posterity) The Kenya National Archives & Documentation Services ,Cap 19, provides for retention/destruction of all government records so that the worthless/ephemerals can be destroyed using the set rules contained in the Act. After destruction of worthless records, the registry creates valuable space where semi-active records are maintained using the laid down classification schemes while the retention records move to another level of digitization/microfilming so that such records can be accessed much faster and also prevent wore &tear of the court file as a result of constant perusal. These records undergo the continuum process where it can be easily referred to by the stakeholders for various use.
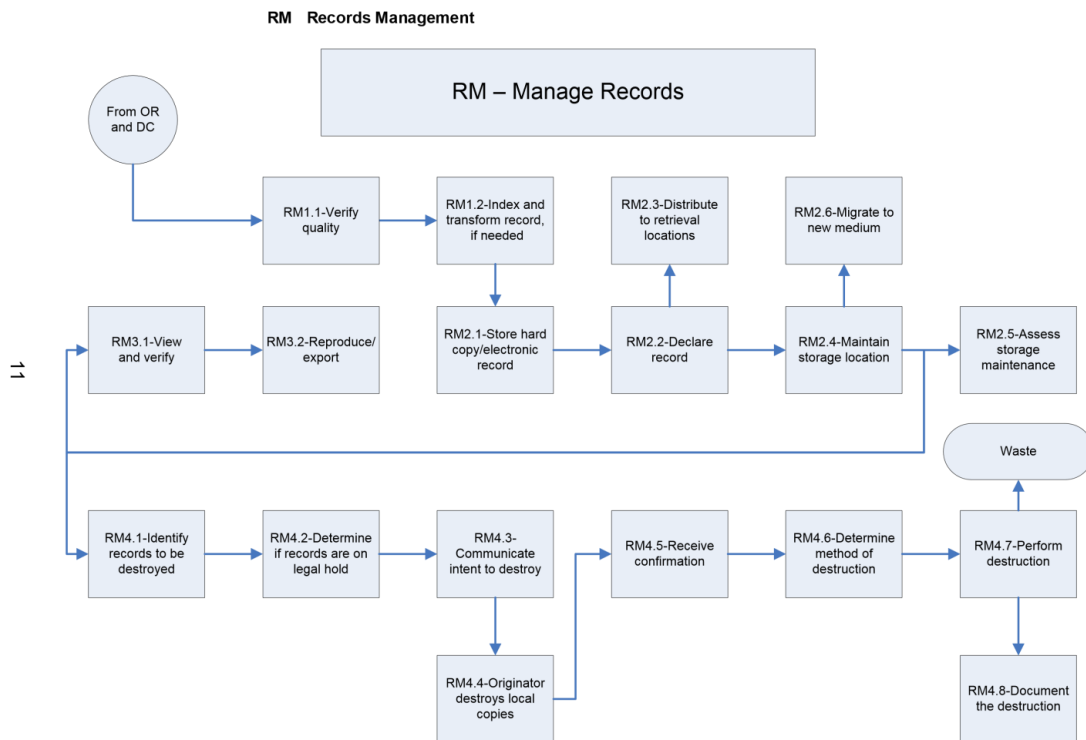
Figure 3: Transformation Model
(Source: Nuclear Information Records Management Association, 2010)

In order to spur the transformation process, in June 2018, the Integrated Court Management System (ICMS) committee approved and adopted for implementation the Court Recording and Transcription System (CRTS) model to be rolled out to the Judiciary. The system will have live recording of proceedings in all courtrooms and on-demand production of transcripts from the recording. Notably, the system is currently being implemented at the Supreme Court and was used during the Presidential Petition where all the recordings were transcribed (Presidential Petition No.1 of 2017; and Presidential Election Petition 2 & 4 of 2017).

Below are some of the transformation initiatives for enhancing access to justice performed by the ICT staff.

■ **Speech to Text Solution -** Writing judgements is a key function for judges, magistrates, Kadhis and tribunal members that can be facilitated by a speech-to-text solution. The solution provides a device and software that takes audio content and

automatically transcribes it into a written form in a word processor. In 2017, the Judiciary of Kenya issued the speech to text devices to 20 judges and magistrates.

- **Enterprise Resource Planning** –This is a software for managing business processes so that organisations can integrate operations and automate back-office using technology. The main objective of the ERP is to automate the administrative units to improve on internal service delivery. The areas that have been planned for automation include budgeting, planning, resource management such as AIE, deposit management, expenditure, delinking of the court stations accounts from sub-county treasury among others. The ERP will also be critical in the financial management of the Judiciary fund (Judiciary fund ActNo.16 of 2016).

- **Judiciary Financial Management Information System (JFMIS) -** The main objective of JFMIS is to automate and digitally document all payment transactions done at the court stations so as to enhance transparency and accountability (Judiciary Fund Act No.16 of 2016). The system has enhanced the court stations' accounting functions under the expenditure, revenue and deposit modules. The Judiciary improved the system in May 2018 to enhance its functionality for digital payments and electronic receipting. The use of the system has improved financial reporting and has delinked a total of (50) court stations from the district treasury thus improving service delivery.

Malake (2020) argued that the success of any organization is dependent upon effective records management practice that ensures the right records are availed when needed for effective operation system and to facilitate the flow of records throughout an organization.Malauzi (2019) asserted that records and information management is critical to the success of organisation digital transformation journey is a vital component to improving back-end processes, maintaining compliance, and supporting

employees as they strive to capture, manage and extract maximum value from business data.

Benefits of the two theories in supporting the study.

1. Access- provides transformative services, expertise & technologies to make the judiciary more efficient &more compliant in managing court cases through integrated information management services across the information lifecycle.

2. Record classification-data is created & shared in completely new ways for instance the judiciary email, customer feedback is shared through social media, posts can be used to support a court case. The judiciary ombudsman office deals with complains emanating from clients who are not satisfied with the services they receive in the registry and thus a ticket for such clients is generated and communications between the office and the client begins via email. The registry staff ought to know what types of records they should collect, & how they will be captured promptly and consistently.

3. Digitization- Judiciary should limit & optimize the creation of paper records. The records officers and registry staff must plan the transition of some of or all physical records to digital. Prioritize scanning based on which physical records are active or widely used. For instance, registration of land cases which are permanently maintained in its entire lifecycle. This follows the Development of a phased schedule so that records can gradually be converted &physical records can either be shredded or stored securely offsite for preservation purposes. More importantly, the digitization will process will enable the judiciary staff to easily extract information & value from documents, making them searchable &retrievable across devices.

4. Indexing- the Milimani High court staff should implement metadata standards& automate the application of that meta data to ensure efficient indexing, collaborate

with other divisions that collect records and determine optimal ways to categorize them. Notably, this is followed by access to the requested court files for action by judges and Magistrates in prosecuting cases. This will help the judiciary employees to seamlessly search for information they need to do their jobs well.

5. Retention- Having an established retention schedule in judiciary, will help the registry staff to reduce costs, increase security& promote compliance. Retention schedules should be integrated into business processes and include an inventory of all records & corresponding descriptions, the division or business unit of origin, how records should be disposed once they reach the end of their lifecycle and how to deal with events that interrupt the retention schedules. (legal holds).

6. Digital Data Security & Access- Data privacy & security are critical to maintaining regulatory compliance &avoiding expensive brand-damaging data break. It reduces the likelihood of litigation or financial penalties with a strong defensible approach to digital records management solution (DMS)that includes permissions-based access &chain-of-custody audit trails.

7. Secure offsite Storage – Certain documents must be easily accessible in the event they are required for an audit or legal discovery. For instance, exhibits which are produced in court like the Title deeds and logbooks should be securely maintained to support the evidence adduced during the hearing of the case. Others can be stored away for permanent preservation. E.g. land &Environmental cases and Family and matrimonial cases should be permanently maintained as stated in Chapter 14, Records &disposal Act, Laws of Kenya. By so doing, the Milimani High court staff will ensure a seamless digital access & secure offsite storage in a certified facility for to protect precious objects, media, & data from elements and natural disasters.

8. Destruction &Deletion- when records reach the end of their lifecycle, records managers to ensure secure destruction &deletion-whether they are paper documents, data in the cloud or on a hard drive. There should be an automated process in place for tracking & managing retention schedules so that information is disposed of as needed.

9. Risk Mitigation- The records managers to ensure thorough implementation of the prior steps by leveraging a Senior Records Management Partner who is well-versed in the judiciary compliance needs & particular documents types. The partner to assess the current practices, provide recommendations &offer digital and physical solutions built with best-in-class security standards. The partner should run internal audits periodically to ensure records are being managed compliantly.

2.4 Management of Court Records from Creation to Disposition

According to ISO (2001:3), records management is "a field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records". Wamukoya (2000) assert that records can only meet accountability and good governance expectations if their full existence is managed.

Bangeman (1994), points out the role ICTs are playing in the emergence of a new industrial revolution which is as radical as the former. The revolution is a manifestation of human knowledge. Technology now enables unrestrained processing, storage, retrieval and communication of information in all forms, over long distances, limitless time and infinite volume. He also argues that enormous opportunities to do things affordably and differently have emerged from reduced communication and computing

costs for all economies. This information revolution, is different from its predecessors in that it has transformed knowledge and radically changed how people offer or receive services.

Registries generate records which they maintain in terms of effecting tracking control systems such as the movement registers. As in charge of registries, the executive officers are supposed to manage the registry operations, which cannot be addressed properly without the existence of a records management unit. Although they are in charge of the registries, they seem not to be entirely responsible for records management. According to Saman and Haider (2012), management of records is one of the factors which nurture successful judicial systems. Records management is thus not a choice but a practice that needs to be undertaken seriously by any justice system. The findings confirm that records management function is critical to the work of courts. They further conclude that notwithstanding the absence of a records management unit in government registries, court records management practices should be undertaken. Some of these include creating court files; filing of court files in the repository; efficient retrieval of files; and registration of e-cases. It would be proper to have such a unit in place so that all concerns of care and security for court records would be addressed adequately.

While giving his opening remarks at the Kenya Judges Colloquium, Gicheru (2009) admitted that the strength of any judicial institution depends on the standards of accountability. However, accountability can only be demonstrated on the basis of records. Indeed, Kanzi (2010) remarks that one of the goals of records management is to enhance accountability. The Higher the standards of accountability, the more respect the Judiciary will draw from the citizens and also the international community. The

IRMT (1999) argues that as the public requires the government to be honest and accountable, the justice system requires good record keeping since it helps to bring about a High level of accountability. Records help government officials to be accountable (Kanzi, 2010).

A case study undertaken by Egonda (2005), on case management in Uganda, established the power of computing to enhance data processing and reporting capacity. Events can be tracked events in a way that generates crucial information for decision making. Timely information enables decision makers' act appropriately and promptly. To fully exploit the benefits of technology in records management, courts in Uganda have embraced Computerised Case Administration System (CCAS) and Management Information Systems (MIS).

Tale and Alefalo (2005) argue that several developing countries, including Kenya, have realised the contribution of ICT to national development. This is particularly so in cases where traditional processes hinder effective delivery of public services. They argue that ICTs present great opportunities for storing and retrieving records cost-effectively. However, Kalusopa (2011) that for ICTs to be used effectively for records management, there is need for buy-in and acceptance by the stakeholders.

IRMT (1999) rightly underscore the significance of effective records management to the success of any legal system. For courts of law to adjudicate over cases before them speedily and with due diligence, court files should be made available so that justice is dispensed forthwith. Dibble (1986) points out that effective service in courts requires access to information and efficient flow of records. Court records are a key component in the delivery of justice. Mnjama and Motsaathebe (2009) concur that records valuable in protecting people's rights and enhancing access to justice. Though information and

records are a fundamental resource to both government and the private sector, Kanzi (2010) laments that information is always underestimated as a key resource in enabling the accomplishment of organisational goals, yet decision making and all that needs to be undertaken in any organisation is pegged on the availability of records and reference to the information held in them. This position was also observed by Dibble (1986) who stated that often records receive a low priority when it comes to budgetary and resource allocation.

An empirical study done by the then Chief Justice, Yong, way back (1990) on Judicial reforms in Singapore provides many lessons for other countries like Kenya. He instituted several reforms meant to transform the legal system in Singapore and make it a model of legal efficiency. At time, the courts experienced backlogs, delays in trial and complex civil and criminal procedures. Coupled with technology, court users soon were able to avoid time-consuming manual processes and get services promptly. His philosophy was that the use of technology remarkably enhances access to justice.

The United Kingdom Code of Practice on the Records Management of (2009) warns that risks are lurking in inappropriate records management. These include poor services, moral and economic losses, failure to comply with requirements, costly operations, long turnaround time, and unwarranted wastage of resources. Poor records management is therefore a risky affair to any organisation be it public or private. Atulomah (2011) laments that records management in developing countries is lagging behind the developed economies. This is a sad confession in view of the fact that records are invaluable to organisational efficiency. If courts have no reliable information and records, their judicial work or function is crippled in terms of presiding over cases in order to make fair judicial decisions.

The National Archives of Australia (2000) underscores the value of records retention schedule in ensuring legal compliance. Records retention schedules determines the length of retention or disposition of records. The schedules enable organisations to balance the costs associated with records storage and compliance requirements. Kennedy and Schauder (1998) concur and add that records retention schedules enable organisations to save money and avoid legal actions associated with non-compliance with legal requirements.

2.5 The available Policies and Procedures to Manage Records

A policy enhances the accessibility and utilisation of an organisation's records by addressing key records management elements. These elements include identification, custody, security, memory, and responsibility (Harris, 1997 cited by Kemoni, 2007). To some scholars, a policy for governing an information agency needs to be flexible, dynamic and responsive to changing circumstances. Other scholars arguing in favour of documented policies suggest that they are effective in training and evaluating staff (Chapman, 1990 cited by Ngulube, 2003). The sources and purposes of a policy on accessibility and utilisation of court records by users vary from country to country and from one court to the other. In the USA, such policies are derived from various sources such as access and records keeping laws, judiciary strategic plans, as well as the vision and mission of records management units (US Department of Justice, 2006).

Organisations exist to serve their public's. They understand that satisfying clients would enable them to be successful both in the private and public sectors. Jones (2003) explains that public institutions which succeed in satisfying their clients must embrace learning and knowledge acquisition. One way of boosting skills and knowledge sets in organisations is by hiring and retaining staff with suitable qualifications and attitudes

towards serving clients. Such staff would be committed to deliver exemplary services proactively and promptly. They also solicit and consider the feedback of customers on the suitability of services and how they are delivered. This way, the organisations stand a High chance of meeting their vision and mission.

Records are important to all court processes at all stages of a case. According to Ndeje-Sichale (2010), proper management of records also ensures that efficient and effective services are provided to the public. Therefore, management of records should be given the same prominence as the other resources in the Judiciary. Dibble (1986) argues that records management is an important discipline that contributes significantly to effective court administration. The justice system may fail when there is no system for creating, maintaining and disseminating records when they are needed.

Consequently, security of the created records should be paramount so that they serve their purpose. Significantly, ensuring that they are stored in a conducive environment is equally significant. The storage area should be out of bounds, secured against unauthorised access, water-proofed, hygienic and tidy. Records should not be dumped on floors, tables, racks or cabinets. Conversely, suitable equipment should be used to secure them in usable conditions. The environment should be well-matched to their formats and retention periods. Equipment used in storage areas should be labelled properly to enable prompt retrieval of records. Finally, storage needs should be reviewed regularly and documented.

In essence, IRMT (1999) correctly asserts that sound records management in the courts is the foundation upon which government and citizens can enforce their rights. Thus, an effective records management in courts will reveal the total number of cases filed, for example, the ones heard and determined and those ones that are still pending.

Information of this nature will indicate the rate of service delivery of justice thereby revealing to the management which actions and decisions need to be taken.

In Africa, policies on records accessibility and utilisation are derived from public archives act, freedom of information, copyright, the right to privacy, the protection of the state and private interests (Ngulube, 2003). Essentially, a policy that governs any information agency is a planning document. In the USA, a model policy on public accessibility and utilisation of court records has been developed (CCJ/COSCA Guidelines, 2002). The CCJ/COSCA guidelines provide a comprehensive framework for accessing both digital and printed court records publicly. Many federal and state courts in the USA, such as in Massachusetts and California, currently follow the CCJ/COSCA guidelines (Silverman, 2004). The scope of the policy includes the purpose, use, and access to information, exemptions, appeal procedures, and monitoring compliance with the access policies (Barata & Cain, 2000).

Any organisation interested in developing a suitable strategy for records management should first develop procedures for documenting, maintaining and promulgating records which promote accountability and evidence in business operations (ISO, 2001). Therefore, a suitable policy spelling out processes for creating and managing credible records is imperative for progressive businesses. Wamukoya (2000) argues that organisations can keep their records systems relevant by constantly conducting customer satisfaction surveys to identify gaps which they should then address. Kalusopa (2011) explains that most public institutions have not performed well in terms of records management because many of them lack documented policies. Therefore, their efforts in this regard are rudderless and ad hoc. Inevitably, they fail without

yielding any tangible results. Such organisations are unable to offer required services effectively.

IRMT (2009) explains that one of the good results of adopting ICTs for managing records is that they enable unrestricted access to records by a wide audience of users. This facilitates prompt decision making and action. ICTs also enable direct and unlimited access to records by multiple users at the same time. Similarly, ICTs facilitate organisations to store huge volumes of records cost-effectively. As an end result, leaders are able to make decisions backed by evidence quickly. Thus, they can contribute effectively to the performance of their organisations. Amongst the early committees established by the Judiciary of Kenya to address issues affecting the delivery of justice was the Kwach Committee of 1998. The report revealed notable findings on the state of court registries some of which have been addressed although not to a great extent while some have not. The committee stated that it witnessed over-congestion of files in registries, lack of necessary filing cabinets and shelving racks. Together with this, the committee observed indifference on part of the magistrates in charge of court registries. Some of these shortcomings are still evident today and they do undermine the role that court records have on the delivery of justice.

A report of the Ethics and Governance Subcommittee of the Judiciary released in 2006 recommended that a policy for managing records in the Judiciary be developed. Such a policy is expected to guide court registries and the management of case files and e-records. This has not been possible since records management staff and archivists in the Judiciary lack the sufficient status to influence records management policy as revealed by the International Records Management Trust (2011) in one of its Kenya court case studies. The study reported that there was no representative from the records

management and archives administration at the top management meetings. This means that the records staff lack sufficient status to influence records management programmes in the Judiciary. This weakens the transformation process.

When senior managers in the organisation are committed to improve records management, the benefits of effective records management programmes can be quite High. However, in most institutions especially in developing countries, Hatibu and Mcharazo (2012) retort, management of records is regarded lowly. The High Court Report on Records Management Training Needs (2014) revealed that most staff deployed in the archives faced disciplinary cases yet the benefits of good records management can only be achieved when records are professionally managed. Deploying staff with disciplinary cases, compromises on the quality of service in the archives since there is a perception generally that working in the archives is for staff with problems related with office work. Proper training is an important element that should characterise any workforce within an organisation. The committees that were mandated with looking into better ways of administering justice in the Judiciary identified the lack of properly trained staff that managed court records and registries. The Kwach Committee (1998), for example, noted that the magistrates who were in charge of certain registries never got to know what goes on in the registries. This is an indication that they lack the knowledge and necessary skills in records management.

The Judiciary's Strategic Plan (2014-2018) stated that the Judiciary will keep on negotiating for additional funding from the national coffers. It will also optimise its own collection of revenues by enhancing its accounting systems. The Judiciary will also seek grants from development partners. This will help it to remain independent and rely less on negotiated funds from the government which may want to control it.

Regardless of the sources of funding, the Judiciary should use the resources transparently and accountably. The Judiciary will ensure that it gets value by eliminating institutional bottlenecks and red-tape in order to achieve effective and efficient justice delivery to all stakeholders.

The records management procedures manual for the public service (2010) pointed out that the absence of sound records management policies, systems, procedures and practices creates room for corruption and poor service delivery. Without readily available information, efficiency, transparency and accountability will be compromised. In this regard, therefore, all authorised officers are expected to ensure that all staff in their institutions observe the guidelines and put systems in place for managing records as outlined in the manual. Furthermore, continued application of this manual will go a long way to improving service delivery in the entire public service.

Tafor and Ngulube (2006), cited by Kemoni (2007) suggested that there was need to encourage research in records management and use in the East and South Africa Branch of the International Council on Archives (ESARBICA) region. Previous studies in Kenya and Ghana have Highlighted the need for organisations to enact records management policies (Mnjama, 1994; Wamukoya, 1996; Akussah, 1996 cited by Kemoni, 2007). Furthermore, Mnjama and Wamukoya (2007) observed that the presence or absence of relevant policies and procedures play a big role towards effective records management. Similarly, Maseh (2015) and Griffin (2003) observed that weak or outdated records regulatory frameworks in government institutions affect effective use of records in those institutions.

2.6 Contribution of Records Management in Supporting the Judiciary Transformation Process

Thurston (2005:2) argues that "the growing emphasis on transparency and the need to reduce large backlogs of court cases have led to case management reforms". Consequently, the use of technology to effectively manage court records has increased. A case in point are Federal courts in the USA which adopted automation of court records in order to increase efficiency in the courts (Caughey, 2004:407). Another citable case is Singapore which transformed its legal systems by embracing the use of information technologies to enhance records management in the courts (Thurston, 2005). South Africa has also launched e-justice systems designed to harness the potential of technology to effectively manage court records (IRMT, 2002). In Botswana, Motsaathebe and Mnjama (2009) argue that adoption of information technology to manage court records has advanced in spite of a slow start.

In Kenya, the Judicial reforms began in (2002) when the Rules Committee, established and constituted under section 81 of the Civil Procedure Act, held public hearings across the country to solicit views on how best to increase efficiency while also reducing the loss of court records and improving service delivery by the courts. Additionally, the concerns of the public as well as practicing advocates were that the court process was too technical and there were a lot of delays in disposing off court cases. This led to complaints about the litigation being a costly affair in the long run which led to a general lack of confidence in the Judiciary.

In a nutshell, as part of Judiciary transformation the Judiciary Performance Management Evaluation Report (2015-2016) indicated, in the last three years, the Judiciary had undertaken plentiful reform initiatives targeted at helping to improve

access to justice and enhance accountability and transparency to realise its Constitutional mandate. The performance results have provided useful Highlights on several indicators such as case clearance rate, backlog reduction and productivity of judges and magistrates across the courts in the country. This is in line with Article 159 of the Constitution which requires expeditious delivery of justice regardless of status. Further, Article 232 of the Constitution requires that public service be delivered efficiently, equitably, responsibly and impartially. Some of the indicators with remarkable improvement include case clearance rate, reduction of case backlog and reduced number of delays in custody.

In supporting the above sentiments, the Social Transformation blueprint (2021) stressed that the judiciary will play a role in equipping citizens with information on how to access justice. This will involve distribution of education materials on judicial services and court procedures, and public sensitization through channels such as radio programme. Similarly, the vision lays emphasis on Higher standards of service and calls for a revamp of customer service facilities to ensure that they are effective and efficient in dealing with public enquires and complains. This will also build public confidence and respect for judicial work. Additionally, the JSC Strategic Plan (2022) states that the delivery of justice is dependent on the support and goodwill of the people of Kenya, all arms of Government, funding agencies, development partners, and other public and private institutions. More importantly, the effective feedback mechanism for the judiciary and affiliate institutions under the commission will be established. to include annual meetings with the leadership of all court levels and representative of judges, judicial officers, and staff to improve on justice delivery mechanism.

Information & Communication Technology in Records Management.

Chring (2022) opined that modern organizations need to rely upon automated, smart records management processes to create a fluent, reliable system that is operationally efficient, secure and compliant. This will ensure-for a start-that records and associated content re easily accessible and can be audited effectively. Tara (2019) also stated that records management is acritical part of digital transformation and needs to keep pace with the company's modernisation plans. As such it is essential to create and adhere to a comprehensive plan and achieve buy-in right across the organization. This way, the organization can rely on the technology to run in the background unobtrusively, allowing the enterprise to function efficiently and compliantly.

Machage & Owuor (2016) stated that in the Judiciary, ICT can be adopted to enhance efficiency, access, timeliness, transparency and accountability and helping the judiciary to provide adequate services. Further, they argued that the use of ICT is considered one of the key strategic elements to significantly improve the administration of justice in a country since the benefits are enjoyed directly by the citizens. Skills development refers to special ability or expertise that enables one to perform an activity by using a computer efficiently and its related peripherals in executing organizational duties, (Armstrong2009). He further argued that training is directed at changing people's knowledge, experience, skills and attitudes. Due to the continually increasing use of computers in our daily communication and work, the knowledge of computer systems and the ability to work with programs have become essential requirements in any modern office.

According to Tara (2019) on Digital transformation for records management &governance, the following are the benefits of ICT:

a. Automated records management declaration and filing- staff to use the underlying business rules engine to automate the declaration and filing process. Business rules can be created to automatically declare a record when the user saves a document into a particular folded, update metadata or when a condition is met. Records can be filed directly to a record folder or using metadata values.

b. Manage records in place-The manage –in-place approach is best when records are from many different sources and duplicating them would not be practical. This approach reduces the cost of migration to a centralizes records repository or could also provide a migrate on-demand option. This approach also allows users to continue to work in the user interfaces they are accustomed to.

c. Long Term Preservation formats and storage- The records system should have the capability to transform different content types to PDF: A for long term preservation. Additionally, it should support moving records with long retention periods to less expensive storage devises. This can be a cost savings for organizations maintaining records for long periods of time.

d. Empower Business Users with Targeted User Interfaces- Provide a user interface that is simple to use for the end user. Records can be declared from the Digital Workspace or with the underlying business rules, simply save content into particulars folders. The Desktop Sync client provides similar capability but integrates easily with desktop applications. When using the Manage in place strategy, users will be working in the user interface they are already familiar with.

e. Reporting and Auditing on the Records Program- Establish performance measurement to identify where problems arise in order to better understand the

efficiency and effectiveness of your records management program. Some Insight Engine can be utilized to report on metrics such as how many records were created, the content type of records, eligibility for disposition or the number of records by record category.

f. Governance is something all managers must take seriously. An effective records management program should address compliance, information governance and legal discovery issues but should be easy for the end –user to adopt. Compliance teams should consider the six concepts above when implementing or restructuring records management system. After all, whatever the form of optimization, communication, collaboration, interaction, experiences, innovation and so on, information (or content or data) has a key success factor to make it happen (on top of human factors, leadership, processes, organization etc. which also require information.)

2.7 Strategies for Improving Records Management to enhance the Judiciary Transformation Process

Studies on the rules and regulations of access to public records have been conducted in both developed and developing countries such as England, Japan, South Africa, and Uganda. The studies scarcely debate laws on access and use of court records. The studies have, however, shown that having access rules and regulations enabled the creation of favourable environments which facilitate effective access to records (Mendel, 2008). According to Mnjama (2003), the impact of information rules and regulation in Africa has not yet been assessed.

According to Kennedy (1998), the degree of ease with which people locate and retrieve records they need to conduct business is an important part of any records management

programme. He further posits that effective classification of records grouping, naming, user permission and security of records easier. Kennedy and Schauder (1998) underscore the role of a records management manual in helping people to know what to do with records they create or how to access the records created by others. The manual standardises procedures, establishes responsibility, assists in employee training and provides for updates on policies and procedures.

Kootshabe (2011) studied the management of records in government departments and revealed many challenges. Some of these challenges include cleaners and messengers accessing areas of records storage without authorisation. In terms of e-records security, it is essential that access to computers holding records is restricted and only authenticated using valid usernames and passwords. This would leave a log history showing who accessed what records stored in the computers. The use of password and username is important for tracking users' activity in the computer. Ricks, Swafford and Gow (1992) argue that organisations which appreciate the important role records play in modern-day business to secure their physical resources and content. It is critical for businesses to understand that original records which have been compromised may never to be restored. On management of disasters, records management personnel should ensure regulatory framework for disaster management is put in place.

In a report on electronic criminal records in Greece, Sarantis (2009) explained that the judicial sector in the country had not shown interest in using ICTs to enhance management of records. This report concurred with Spadone and Weichsel (2005) who had earlier stated that the Judiciary was sceptical about the use of technology because they fear it would water down their independence. Nonetheless, Prinz and Kolvenbach (1996) aver that many government departments in several parts of the world

acknowledge the crucial role that technology plays in improving service delivery to the public.

Crawford et al. (2005) conducted a study on acquiring technology in Uganda. The study revealed that Ugandan courts for many years relied on manual records. The production of the records involved several court officers and staff scribbling, copying or taping proceedings. These records were thereafter transcribed and typed. This process was not only complex but also tedious. It was also prone to human error. The study found that the courts have now embraced technology which has made creation, processing and storage of records much easier. Besides, the records are now more accurate and take shorter time to produce. This has contributed greatly to better delivery of services by Ugandan courts.

In Kenya, the Judiciary Transformation Framework (JTF, 2012-2016) was created to guide courts to deliver better services to their clients. The Judiciary Strategic Plan (2014-2018) leveraged on this to focus the efforts of the Judiciary to excellence in delivering justice to the public. The Milimani High Court, just like other courts in the country uses the JTF and strategic plan as the roadmap towards attaining transformation.Apparently the court also takes cognisance of emergent developments establishing judicial systems in the core of National Development Agenda. The court is also implementing the Performance Management and Measurement Understanding (PMMU). This has led to increased productivity among judges, judicial officers and staff; enhanced data usage in decision making; improvement of data capture through the Daily Court Returns Template (DCRT); improved record keeping; and reduction of pending cases (Performance management and measurement understating evaluation report (2015/2016).

Through DCRT, the Judiciary is able to show the backlog of cases and the number of cases resolved monthly per judge or judicial officer in any court. This information is critical in revealing the caseload in the Judiciary and in making decisions in the Judiciary that will go a long way in enhancing efficiency and effectiveness in service delivery. In conclusion, the Hon. the Chief Justice in his key address (2017) stated:

> "I therefore call for commitment of all judges, judicial officers and staff to pursuit of an effective performance-based management system, and to play their part in the Judiciary transformation agenda. This is a journey that we will continue building on in our efforts to sustain the transformation, for better service delivery."

State of the Judiciary and The Administration of Justice Annual Report (2021) Highlighted that the rapid development and use of technology in court for the past two decades has opened up new frontiers of service delivery. The availability of stable fast internet connectivity, web services, on-line access legislation and case law, use of electronic filing, and electronic exchange of legal documents are some of the developments that have compelled judicial administrations around the world to rethink their mode of operations in delivering their mandate The Kenyan Judiciary through its Strategic Blueprint Policy documents, prioritises technology development as a key focal area to support court work. Furthermore, the JSC. Strategic plan, (2022-2027) clarifies that the ICT strategy will help develop, implement, and utilize relevant technologies that underpin all aspects of the JSC, it will be integral to delivering services from providing information and advice, effective analysis of environmental and demographic, and social changes for better management and planning and performance of mandated functions. The ICT will also support the office operations, provide data storage, information management, email and mobile communications which has not been adequate hence the need for the study in order to fill the gaps.

2.8 Chapter Summary

The chapter presented literature review on the topics of contribution of records management and transformation process as well as the nexus between records continuum model and justice delivery. The review of literature has revealed that there is a strong link between records management and justice delivery. Additionally, records management has contributed heavily to the functioning of the courts as the demand for transformation process escalates. There is high demand for better management of court records so that court cases can be heard and determined within a stipulated period efficiently and effectively.

The literature sources consulted, were unanimous that records management is a key success factor which has contributed to efficient justice delivery through the use of ICT and also supported the transformation process. Notably, security of records is one of the principles of good records management which requires that records be securely maintained to keep off the internal and external unauthorised access. Similarly, caring of records to guard them against fire, water and pests by ensuring that proper environmental controls are put in place and functioning. Furthermore, adequate and tailor-made storage facilities must be given priority so that records remain authentic and can be accessed to stakeholders whenever they need to peruse the court files. In conclusion, there is no study which has been conducted in Kenya on how to improve record management so as to contribute to the judiciary transformation process.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

R**esearch methodology** discusses and explains the data collection and analysis methods used in the research. The methodology explains what and how the research was done allowing readers to evaluate the reliability and validity of the research topic. (McCombes, S. & George, T. 2022) Research methodology is a systematic way to solve a problem.

It is a science of studying how research is to be carried out. Essentially, the procedures by which researchers go about their work of describing, explaining and predicting phenomena are called research methodology. It is also defined as the study of methods by which knowledge is gained. Its aim is to give the work plan of research. Research methodology encompass a comprehensive range of techniques and methodologies employed in the execution of research endeavors. (Mishra & Alok, 2022).

It should include:

- The type of research conducted
- How data was collected and analyzed
- Any tools or materials used in the research
- How the researcher mitigated or avoided research biases
- Why the researcher chose these methods

The research methodology used in this study is explained in this chapter. The chapter explains the research paradigm, approach, design, population studied, sampling techniques, tools for data collection, techniques and procedure of data collection, as well as data analysis and presentation techniques.

3.2 Research Paradigm

A paradigm is a belief system which is essential for understanding the theoretical framework which under girds a research project. A research paradigm reveals assumptions about how to understand the research problems and interpret the findings in a way that answers the research questions validly.

According to Creswell (2014), there are four paradigms which can be applied to research. These are positivism, constructivism (interpretivism), tranformativism, and pragmatism. While positivism assumes that knowledge is objective, constructivism argues that human beings construct their knowledge based on their experiences and context. Transformativism focuses on inequalities in society and seeks to bridge gaps in communities caused by socioeconomic imbalances. Pragmatism is not committed to either of the paradigms. Conversely, it integrates all the views espoused by the conventional paradigms depending on the context of the study.

This research used pragmatism research paradigm because it is flexible and accommodates diverse research approaches based on the context within the study being conducted. Since the research involves different types of respondents of which every respondent interacts with the records differently. Thus challenges and solution differ which can best be addressed by the respondents involved for the purpose of having a comprehensive research. Pragmatism does not privilege one type of knowledge or research method over another. The study calls on researchers to critically analyse which interests are served in a particular situation by the application of a particular kind of knowledge. (Brooke, 2021). He further argued that pragmatism allows for careful consideration of what type of knowledge would best serve the interests of a community within a given context, including the value of experimental knowledge contributed by

individuals. Use of pragmatism research helps to eradicate the perception people have on the records management system and brings out the real picture on the ground and challenges faced. The paradigm also emphasizes the contribution of research subjects in the research projects by soliciting their input in understanding the research issues. Thus, they contribute experience, opinions, views, perspectives and insights which are not possible to obtain in any other way. Combined or linked embedding of data from both types of studies provide a better understanding of a research problem or issue than either research approach alone could provide.

3.3 Research Approach

Mixed methods research is a research method that combines and integrates qualitative and quantitative research methods in a single research study. It involves collecting and analyzing qualitative and quantitative data to understand a phenomenon better and answer the research questions. Qualitative research is a type of research that explores and provides deeper insights into real-world problems. It helps generate hypotheses as well as further investigate and understand quantitative data. Qualitative research at its core, ask open-ended questions whose answers are not easily put into numbers such as 'how' and 'why'. Due to the open-ended nature of the research questions at hand, qualitative research design is often not linear in the same way quantitative design is. One of the strengths of qualitative research is its ability to explain processes and patterns of human behavior that can be difficult to quantify. (Grace D., Janelle M. & Steven T, 2022).

Quantitative method is the collection and analysis of numerical data to answer scientific research questions. Quantitative method is used to summarize, average, find patterns, make predictions, and test causal associations as well as generalizing results to wider

populations. It allows us to quantify effect sizes, determine the strength of associations, rank priorities, and weigh the strength of evidence of effectiveness Quantitative method is the collection and analysis of numerical data to answer scientific research questions. Quantitative method is used to summarize, average, find patterns, make predictions, and test causal associations as well as generalizing results to wider populations. It allows us to quantify effect sizes, determine the strength of associations, rank priorities, and weigh the strength of evidence of effectiveness Quantitative method is the collection and analysis of numerical data to answer scientific research questions. Quantitative method is used to summarize, average, find patterns, make predictions, an detest causal associations as well as generalizing results to wider populations. It allows us to

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A descriptive study establishes only associations between variables; an experimental study establishes causality. The central premise of using mixed methods research is that it makes the most of the strengths of each data type while neutralizing their weaknesses. Researchers combine qualitative and quantitative methods to expand their evidence, improve the credibility of their findings, and illustrate the results from one method with the results from the other one (Johnson.& Schoonenboom, 2017).

The current study adopted a qualitative approach with some elements of quantitative approach. The choice of the approach was informed by the mixed methods approach which uses both quantitative and qualitative data to answer research questions. It is based on the understanding that there are always multiple sides to reality which can only be unraveled using multiple approaches of inquiry (Wisdom, 2011). According to Creswell and Clark (2011), mixed methods approach involves collecting, analysing and interpreting both qualitative and quantitative data. Depending on the needs and context of the study, both types of data can be collected at the same time or separately and then mixed for analysis. A researcher can also decide to collect qualitative data followed by quantitative data and vice versa.

According to Creswell and Plano (2011), there are three types of mixed methods research. They explain that explanatory sequential approach involves a researcher collecting and analysing quantitative data before collecting qualitative data. This is the opposite of exploratory sequential mixed methods where qualitative data is collected before quantitative data. However, convergent parallel mixed methods approach involves collecting and analysing both types of data at the same time. This study applied convergent mixed methods approach. Thus, the researcher collected and analysed qualitative and quantitative data concurrently.

The mixed methods approach was preferred because the aim of the study was to gather comprehensive information from the respondents on their experiences and opinions regarding the contribution of records management practices to the Judiciary transformation process at Milimani High Court. Furthermore, and as advocated by Teddie and Tashakkori (2006), mixed methods approach is chosen because it best aligns

or supports the substantive purposes and questions of the study. It enables the study to validate its findings using quantitative and qualitative data sources.

3.4 Research Design

Basically, research is structured using a design indicating how the various components relate to each other in investigating the research problem (Berg & Howard, 2012). Research projects are designed and planned systematically to ensure that all the data needed to answer the questions are collected, processed, analysed and interpreted appropriately (Saunders et al., 2012). It also explains how the results of the study can be published.

This study used case study research design. Yin (2004) explains that a case study enables researchers to empirically investigate phenomena in-depth and in real life. The researcher preferred a case study because it allowed a comprehensive study as well as an exhaustive and intensive analysis of a small number of subjects. Furthermore, it allowed precise judgments on factors and causes of the phenomena under study. The research design also provided an opportunity for thorough and detailed examination and analysis of the findings against the major themes under investigation.

3.5 Study Population

The study population was 90 which included: Judicial officers, Records officers, Court assistants, ICT officers, Secretaries, Executive officers, Advocates and Litigants at the Milimani High Court in Nairobi, Kenya. Judicial officers are judges and magistrates. They are the officers who adjudicate cases and deliver judgments after the entire evidence has been submitted. Registry staff maintain and disseminate requested case files to judicial officers, and they also facilitate prompt justice delivery to stakeholders. Court assistants ensure court records are prepared on time and placed before the judges.

In case a court file is missing, they must track the last action from the system and forward such files to the judicial officers for appropriate action. ICT officers capture data in the system. More importantly, they ensure the daily cause-list is appearing in the Judiciary's website where advocates and litigants can check their matters before they appear in court. Secretaries type all the handwritten judgments to be used for personal use by litigants, to file an appeal in the court of Appeal or for law reports to improve jurisprudence.

Records managers ensure that the repositories where concluded cases are kept are safe. They also ensure that proper labeling of shelves is done to facilitate fast access, retrieval and dissemination of court files to clients. The Executive Officers sign correspondences relating to clients. Advocates and litigants interact with the Judiciary staff when they request to peruse court records, file documents in the registry. The population was subdivided into representatives from different divisions at the Milimani High Court. These are criminal, civil and judicial review divisions. Table 3.1 shows the distribution of the numbers of the various categories of the target population and sample size.

3.6 Sampling Technique

A sample as used in this study is a small part of the entire population (Thornhill, 2012). This representative group is selected using a sampling technique which can either be probability or non-probability. In probability sampling, the sample is selected randomly. In this technique, every member of the population stands an equal opportunity to be selected. In non-probability sampling, however, the selection is not random and may be based on convenience, availability or any other criteria determined by the researcher.

The population at the Milimani High Court was too large to be covered entirely by the study. Notably there is high litigation occasioning huge figures of cases being filed/registered per year. Thus the researcher felt she would get credible response from the registry staff who were attending to the high turn up of clients. Therefore, this researcher used purposive sampling technique to come up with a sample. The researcher particularly used information-oriented purposive sampling where she chose respondents who were able to contribute valuable information for the project. The technique was also used by the researcher because the selected respondents had the required knowledge and also they interacted with the court records and litigants on daily basis hence they were ready to take part in the study.

A multi-stage sampling approach was used by the researcher. In the first stage, the researcher limited the study to the Criminal, Civil and Judicial Review divisions of Milimani High Court. This is because the other divisions, commercial, family and children divisions were undergoing restructuring at the time of the study. A total of 63 respondents purposively selected based on their capacity to contribute valuable information to the research. The sample consisted of 4 judges, 1 human resources director, 5 deputy registrars, 4 executive officers, 9 records officers, 10 registry staff, 15 court users (advocates and litigants) and 15(Secretaries & ICTs)

Table 3.1 Sampling of Respondents

Category	Target population	Sample size
Judges	6	4
Human Resources Director	1	1
Deputy Registrars	6	5
Executive Officers	5	4
Records Officers	9	9
Registry Staff &Court assistants	15	10
Court Users	27	15
Others (Secretaries and ICT)	21	15
Total	**90**	**63**

3.7 Data Collection Techniques and Tools

Yin (2014) identifies five data sources in a case study. The sources include literature, records, interview, observation and artefacts. Due to the in-depth nature of the study, the researcher used face to face interviews and participant observation to collect data. The two research methods complemented one another thereby generating comprehensive and reliable data.

3.7.1 Interviews

An interview involves holding a conversation between a researcher and a participant (Lewis & Nicholls, 2013). Interviews help researchers to understand salient issues relevant to the research (Gill et al., 2008). Interviews can either be structured, semi-structured or non-structured (Sreejesh et. al, 2014). This is determined by the type of questions asked. In a structured interview the questions are closed while in semi or non-structured interviews, the questions are open and flexible. Although the researcher interacts directly with the respondents in all the three types of interviews, non-structured interviews offer the best flexibility for research.

In this study, the interviews were face to face and semi-structured. The researcher used this data collection technique as it provided a good means to gather or probe as much information as possible. The face-to-face interviews were carried out using an interview schedule to guide the interviewer. The schedule contained semi-structured, closed and open-ended questions. This flexibility ensured that there was room for the interviewee to give additional information that may have not been anticipated by the researcher. Structured (closed) questions were used to collect quantitative data while the non-structured (open) questions collected qualitative data. Interview schedules were sent well ahead of the interviews via email at the time the researcher sought appointments with the interviewees.

3.7.2 Observation

According to Ocholla and Ojiambo (1993), observation is a classic method of scientific enquiry for collecting data in which the data collector (researcher) senses the events in question, either directly or through some intermediary device. It entails seeking information by way of investigators witnessing what goes on in the organisation without asking the respondents any questions.

In this study, the researcher applied personal observation which involved seeing and recording people's actions and behaviour as they were served and the reaction of both the customers and High Court staff. The researcher sought information by way of investigating and witnessing the activities which were conducted in the organisation without asking the respondents any questions.

A checklist, which is annexed, was used to collect data through observation. Observation is a reliable method through which first-hand information can be obtained and is free of bias as information is received as seen and the researcher cannot forget what they saw.

3.8 Data Collection Procedure

Data collection procedure details the step-by-step approach to actual data collection. Yin (2014) urges researchers to be aware of possible biases in research and avoid them. The researcher obtained introduction letters from Moi University to introduce her research to the respondents. She also used the letter to obtain a research permit (see Appendix 4 and 5) from the National Commission for Science, Technology and Innovation (NACOSTI) which authorised her to collect data.

Thereafter the researcher booked an appointment with the Registrar of the High Court to inform her about the intended interviews with the judicial officers and judicial staff at the Milimani High Court. The Registrar of the High Court advised the researcher to send an email to the judges and registrars about the intended interview to request their availability. For the executive officers and registry staff, the researcher conducted personal visits and booked appointments when they were not having court sessions. The Judges and Deputy registrars responded through email indicating the dates they were available while the Executive officers, Records officers, Secretaries and Court assistants indicated the dates when the courts were not in session. Three of the judges rescheduled their interview date upon receipt of a programme for workshops which they were supposed to facilitate. Although the researcher knew some of the respondents, formal introductions were used and objectives of the interview were well stated to the respondents to formalise the interview process. Interview sessions for the judicial officers took 30 minutes while for the executive officers and registry staff, it took 35 minutes. Another interview date had to be rescheduled for one judge and two court assistants owing to the filing of certificate of urgency cases in the courts where they worked in.

The researcher obtained informed consent when booking appointments with the respondents. Therefore, each respondent did not only express availability, they also confirmed willingness to participate in the study. An informed consent form was used for this purpose. During the interviews, a digital audio recorder was used to document the conversations; the researcher also made hand-written short notes as a backup to the audio recording. The judicial officers and registry staff had already consented to the audio recording and were comfortable with it throughout data collection period. The interviews were conducted in English with only one question asked at a time. The

researcher carried out the research in a friendly and courteous manner while avoiding irrelevant questions from the respondents. The semi-structured interviews allowed for freedom and flexibility while probing when the researcher felt that the response was not exhaustive.

As for observations, the researcher identified strategic places in the service delivery sections where she observed the way staff interacted with the clients and how the clients responded. The researcher also monitored the duration it took for a client to be served and how long it took for a court file to be retrieved and accessed by the advocate or litigant. The researcher made hand-written notes for each day which were later transcribed in the evenings until all the observations were completed in all the concerned courts.

3.9 Validity and Reliability of the Study

The draft interview schedule was pre-tested on a few members of the population that were not expected to participate in the study. These included two judges from commercial division; two deputy registrars from family division as well as three court assistants, one archivist and three advocates from the same divisions to verify that the questions were well understood; the questions were clear; the interview lasted for the required time; and the questions were not intimidating to the respondents.

The findings of the pre-testing enabled the researcher to correct and edit the interview schedule to ensure that only valid data was collected. The above quoted divisions which were involved in the pre-testing of the tools have a High number of litigation where they manage large quantity of court files, hence they are so much involved in records management and also serve a huge number of clients. Thus they were able to counter-check the lists for any anomalies and any missing information relevant to the study.

Similarly, the actual pre-test interview process took place among the selected respondents. After the entire research study, the researcher compared what she got with the pre-test results. The outcome was that only few additional interview questions were done to ensure the study was fully covered. Reliability measures the extent to which an instrument yields consistent results with each use (Kortrijk & Higgins, 2001). If the data collection instruments are not valid and reliable, then the results collected will always be in doubt and the findings of the study may be challenged (Maxwell, 2013). It is the stability of consistency of scores over time or repeated trials in the study. Fraenkel and Wallen (2000) asserted that reliability refers to the consistency of the scores obtained. The researcher tested the research instruments to enhance the reliability of the study.

Validity is the degree to which the research accurately measures what the research intended to measure. As mentioned earlier, the interview schedule was pre-tested with two judges, two deputy registrars, three court assistants, one archivist and three advocates who were not participating in the study. This process helped to determine both the validity and reliability of the interview schedule. Thus, the results of the initiative were similar and reflected the expected output.

3.10 Data Analysis and Presentation

Analysis and interpretation of research data is the basis of new knowledge. Through data analysis and presentation, the researcher articulates the findings of the study to elucidate justifications, causes or implications of data (Punch, 2013). The process involves organising, editing, coding, classifying and tabulating the collected data for analysis. Below were the steps followed during data analysis process.

3.10.1 Organisation of Data

Raw data collected from the interviewees and notes from observation were organised by breaking them down into manageable themes that were descriptive and expressed them exhaustively in a logical flow and comprehensible format. This involved transcribing interviews, editing, sorting field notes, and categorising data according to the source of information.

3.10.2 Creation of Categories, Themes and Patterns

The researcher distinguished data from each other by establishing relationships amongst categories of respective data. This included putting together the numerical data that was generated for analysis. Code categories were generated by the researcher both manually and using computer software.

3.10.3 Coding Process

Coding involves categorisation of data for analysis (Gibbs, 2007; Saldana, 2013). Coding also enables conversation of data to machine-readable format for analysis. After making sense of the responses and getting their meaning, the thoughts were written on the margins. After the data was categorised, selective coding was done by grouping the categories by similarity and themes identified based on each grouping. Therefore, coding is not just labelling, it is linking data to the idea and back. Sources of verbatim responses are also coded to protect the identity of the respondents'. For instance, codes as 'R1, R2, R3…. to R36 can be used in reference to a particular respondent.

3.10.4 Description

The description was generated from the coding process which involved a detailed description of information. Themes were generated from the major findings. The themes were used to create the respective sections of the study.

3.10.5 Interpretation of Data

After coding and describing the data, the researcher evaluated and analysed the data. Soon after analysis, meaning was derived from the formulated theories to generate new knowledge. The evaluation created usefulness of the information in regards to answering the research questions.

3.11 Ethical Considerations

According to Reiss and Judd (2000), participants in a study should do so voluntarily. The researcher considered several ethical issues to ensure that the study did not adversely affect the participants and the other parties. The researcher took time to inform the participants about the purpose of the research as well as its methods and tools.

The researcher was honest and upheld the professional ethics. Respondents' information was handled privately and confidentially for the purpose of research only whereby the researcher gave codes to the respondents to avoid disclosure of names. For instance, R1, represented respondent number one all through to the last respondent who was R63. The researcher also gave credit, and appreciated, respected, recognised and acknowledged other authors' works by avoiding lifting, plagiarism and falsification of data.

3.12 Chapter Summary

This chapter discussed the research methodology applied in conducting the study. It elaborated the study population, as well as sample and sampling procedures. The research was conducted at Milimani High Court, Nairobi Kenya. The study sample was obtained from the target population who included judges, deputy registrars, director human resource, executive officers, registry staff, court assistants, secretaries, ICT

officers and members of public. The instruments adopted by the study to collect data were interview guides and observation checklist from which the researcher gathered all the relevant data that addressed objectives of the study. Data collected were presented and analysed in line with appropriate ethical considerations. The next chapter deals with the presentation, analysis and interpretation of data.

CHAPTER FOUR

DATA PRESENTATION, ANALYSIS AND INTERPRETATION

4.1 Introduction

The chapter elucidates the presentation, analysis and interpretation of data that was collected from Civil Division, Criminal Division and Judicial Review Division respectively of Milimani High Court in Nairobi. This chapter therefore presents and analyses data obtained from the respondents through in-depth interviews with the judges, deputy registrars, human resource director, executive officers, records officers, registry staff, court users represented by advocates and litigants, and other court staff represented by secretaries and ICT officers.

Table 4.1 shows the interview response rate.

Table 4.1: Response Rate

Target group	Sample Size	Number Interviewed	Response in Percentage
Judges	4	2	50
Human Resources. Director	1	1	100
Deputy Registrars	5	4	80
Executive Officers	4	2	50
Records Officers	9	7	78
Registry Staff	10	8	80
Court Users (Advocates & litigants)	15	11	73
Others (Secretaries& I.C.Ts)	15	7	47
Average response rate	63	42	67

The working formula $X/Y*100=P$

Key:

X-Number Interviewed

Y-Sample Size

P-Percentage

The collected data was analysed and interpreted according to the specific objectives of the study which were to: establish the types of records maintained at the Milimani High Court; examine the effectiveness records management practices.; establish the available infrastructure of policies to manage records,; facilitate the contribution of records management in supporting the Judiciary transformation process; and propose strategies for improving records management to enhance the Judiciary transformation process. Thus, data was analysed based on those thematic areas derived from the objectives of the study.

4.2 The Respondents

The Judicial officers who included the judges and deputy registrars sit in the courts to preside over and determine cases placed before them by the registry staff. Their feedback was important to the researcher since they handle various types of cases. Therefore, they were able to contribute valuable insight on matters relating to case backlog. The Human Resource Director also played an important role in regard to clarifying the qualifications expected of a records officer during appointment and what he considered during promotions of the staff. He is responsible for provision of staff to work in different sections in the divisions. The executive officers generally offer administrative service which including supervising registry staff. They ensure efficiency and effectiveness of the registry processes. The researcher was able to gather more information from them on registry procedures.

Records officers and registry staff including court assistants offer vital services to the stakeholders by ensuring that court cases are retrieved, disseminated efficiently and effectively to action officers. This group of people assisted the researcher by providing the case data in relation to storage of court records, security, reference and handling of

court files and exhibits. Court users include litigants who represent themselves in courts of law while advocates represent clients seeking legal action against a suspect. The researcher was able to gather feedback from this group of people on whether they were satisfied with the laid down procedures and, if not, how best they expected to be assisted.

The researcher also obtained responses from the court users on areas where the Judiciary staff should improve. The ICT department also support records management by preparing the court daily cause list where all cases listed before judicial officers are displayed in court and also availed in the Judiciary website to enable the advocates and litigants to confirm their cases. ICT officers enhance case and archive management which ultimately contribute to prompt justice delivery. Notably, the secretaries managed court files which were pending for judgements/rulings before the judges. They are mandated to type all the court proceedings, proof read the hand writing and print the original copy for the judge's signature. These proceedings are availed to clients upon payment of the requisite fees and thereafter the proceedings and judgment can be used to file an application for Appeal in Court of appeal. Therefore, they must safeguard court files and judgment in their custody. The researcher was able to capture all the data/information she expected to get from the interviewed respondents regarding these matters.

4.3 Background Information of the Population

First, it was important for the study to understand the response rate of the population from the three (3) selected divisions. Table 4.2 summarises the frequency rates by the divisions.

Table 4.2: Divisional representation at the High Court

Divisions	Frequency	Percent
Criminal	30	33.3
Civil	31	34.4
Judicial Review	29	32.3
Total	90	100

The population comprised of ninety members of staff from the three divisions. In terms of divisional representation, Criminal and Civil divisions comprised of 33.3% and 34.4% of the population respectively. This was because they comprised a Higher number of population than Judicial Review which comprised 32.3% of the population. It can be affirmed that the divisions were fairly represented in the study. However, the sample size consisted of 18 senior officers and 45 registry staff, including court users who were scheduled for the interview. This represented a response rate of 67% as indicated in table 4.1 above. Thus, the study comprised of a fairly balanced ratio of representatives from the Milimani High Court. This enriched the collected data which helped in assessing the contribution of records management to the Judiciary transformation process.

Further, it was deemed necessary to determine the designations of some of the respondents. This was important as it helped to establish if the respondents were in a good position to give relevant information needed for the study. The findings are shown in Table 4.3.

Table 4.3: Designation of some of the Key Respondents of the Study

Designation	Number of respondents	Percentage
Human Resources	1	3
Deputy Registrar	5	14
Executive Officer	5	14
Records Officers	9	26
Registry Staff	15	43
TOTAL	35	100

Table 4.3 shows, some of the respondents who comprised the human resource director 1(3%), deputy registrars 5 (14%), executive officers 5(14%), records officers 9(26%), and registry staff 15(43%). This was an objective representation of the targeted respondents as they were deemed to constantly interact with court files while the Human resource director mostly interacted with staff files. Anytime the divisions needed staff the director was called upon to provide staff. The researcher decided to pick on the deputy registrars since they perform similar duties as judges. While the secretaries maintained only files pending for judgment before the judge and ICT staff enabled the due process of justice to take place by supporting the registry staff. Through maintenance of case tracking systems.

4.4 Types of Records Maintained at Milimani High Court

The study's first objective was to establish the types of court records maintained at Milimani High Court, Nairobi. The respondents were, therefore, asked to point out the types and formats of court records they interact with at Milimani High Court. Almost all the respondents identified case files, court registers and court diaries in paper formats as the types of records they interact with. According to the judges and deputy registrars, records which are useful for service delivery areas indicated in Figure 4.
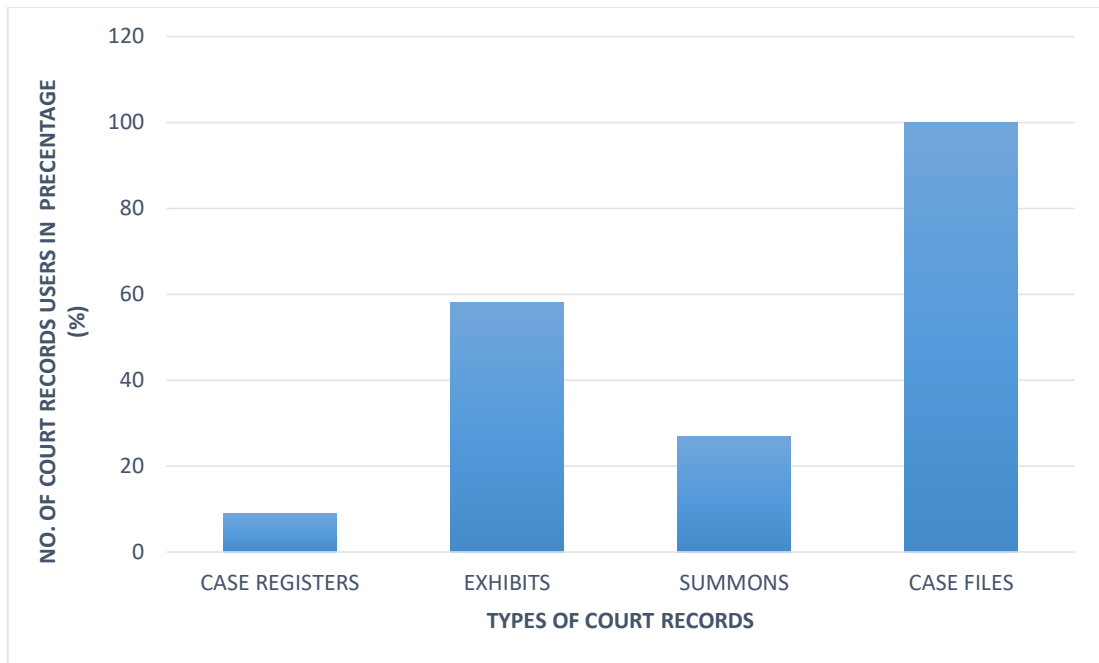
Figure 4: Records Maintained at Milimani High Court

According to Figure 4, all judges and deputy registrars interviewed stated that they relied on case files in their line of duty as well as exhibit which are produced in court as evidence to support the ongoing case. Other useful records were Court summons which are sent to the accused person to inform/notify them of the filed criminal case. While, court registers are the permanent records which contain detailed data for each accused and summary /outcome of the case (date and name of judge /deputy registrar who adjudicated/read the judgement). When asked about the type of records they handled, most of the judges and deputy registrars unanimously responded in the affirmative for court files. This is an indication that the core business of the High court is to administer justice fairly through the preparation of court proceedings and judgements. The exhibits were also regarded as crucial documents which were relied upon to support fair hearing and determination of cases. In line with the above statements, it emerged that court files should be maintained properly from creation

through to their disposition. Effective maintenance throughout the life cycle enables the records to serve their purpose effectively.

4.5 Records Management Practices from Creation to Disposition

The second objective sought to examine the effectiveness of records management practices used in managing records throughout their life-cycle. The practices involved creating, accessing, using, storing, maintaining, appraising and disposing records. This objective explored these practices.

4.5.1 Records Creation

Records officers and court assistants were asked to state their responsibilities in order to understand how records are created. The responses are summarised in Table 4.4.

Table 4.4: Responsibilities of Records Officers and Court Assistants

Respondents	Response
R 16	Verification of presented pleading and exhibits for completeness; Opening of files; Assignment of case number and registration of the case; Date stamping of the documents; Filing such record in the filing section; and Retrieving when requested.
R 17	Assessing payable fees and verifying bank slips; Date stamping the documents; Issuance of court fees receipts; Entry of data in case register; Ensure safety of file; Record and forward file to date fixing section.

Respondents who mentioned creation of files were asked to narrate further how the files were opened. Two of the respondents one, R16 from civil registry gave their summary in their own words as follows and the other from judicial review registry (R17).

In civil registry R. 16 stated that:

> *"Presentation of the plaint is done by the client who is filing a new matter, whereby the plaint verifies whether the document should be filed in civil or other division then confirm all the required documents. The registration staff at the counter shall ensure that all new files meet the prerequisite legal requirements before filing. The file cover shall reflect the colour codes and indexing for the various classes of cases. The new matter is given serial number to facilitate payment of filing fees. After payment the case is registered and the file is dispatched to court for hearing or forward to date fixing section. Thereafter, the new case is filled in the registry and only retrieved when requested by the client".*

In the opinion of R17, judicial review occurs as explained hereunder:

> *"Application is filed through a petition which is prepared by the applicant / petitioner. It is then assessed for credibility as well as assessing court fees to be paid for the petition. The rules pertaining to the court fees assessment are found in Part (IX of the judicature Act Cap 8) Laws of Kenya and the schedules to the various statutes. After the petition meets the requirements, the applicant is asked to make the necessary court payments and on proof of payment it is given a case number after which the petition is registered. A folder is opened where the pleadings are systematically attached inside the folder using a treasury tag. The file is then forwarded to the Deputy Registrar for direction, but if it is an urgent application, which is filed under certificate of urgency, then the file is taken to the duty judge for hearing. After the close of hearing the file is filed back in the registry awaiting the next action date".*

The registry staff were asked if they rely on a documented set of procedures to perform their duties. They unanimously responded that there is no such document. Instead, they rely on instructions from superiors who included the executive officer. These views contrasted with those of the Principal Executive Officer who stated that the registry staff should be guided by a Registry Operations Manual which had been distributed to various stations countrywide. The officer also clarified that not all registry staff have been sensitised about this manual and trained on how to use it. This researcher obtained the manual and reviewed it and found that it did not contains all the instructions necessary for effective registry operations. When the records officers were asked how they created court records, they stated that advocates and litigants presented their legal

documents to court and upon perusal by the records officer assigning of case number is followed by assessment of the court fees. Thereafter payment is made and stamping of the documents confirms the completeness of the court file. This also confirms the authenticity of the court documents and that the court file can be placed before a judicial officer for commencement of the hearing.

4.5.2 Records Access and Use

The court assistants and court users were asked whether the available equipment facilitated seamless searching and delivery of records needed by court users. All the respondents indicated that the High Court had a partly efficient filling system, though this process was learnt from their seniors or on job training. They also reported that court records are manually classified using an alphanumeric scheme. This system identified records by their year and place of creation. The researcher had an opportunity to observe the filing system while in use. She observed that a file numbered HCCR.41/2016 was the 41st file created in 2016 by the Criminal Division of the High Court. The records management staff were not satisfied with the filing system and reported that they felt there was need for an approved policy in place to guide new staff.

A good number 7 (70%) of the criminal registry staff also acknowledged the use of shelf labels to identify records. They also used a computerised finding aid to determine the actual locations of files. Nonetheless, 2(22%) of the records officers stated that these systems were constrained by congestion occasioned by limited filing spaces in the Judiciary. Besides these challenges, effective access to records was also constrained by a lack of a relevant policy. All the records management respondents attested to this challenge. Nevertheless, they clarified that all the concerned staff knew what to do based on experience. They also knew what level of access to accord different categories of court users.

The Attorney General and journalists do not pay perusal fee, which is payable to court when the litigant or advocate wants to peruse the court file. The perusal of court file is done in the presence of a court assistant to ensure no document is plucked from the court file and more importantly to secure the entire file. The researcher observed how perusal of a file was conducted by an advocate at the Judicial Review registry at the time of data collection. The records officers and court assistants were asked how they move files between storage areas and points of use. They unanimously reported that they use a manual file register which document file movement within the organisation

4.5.3 Records Storage and Maintenance

The study investigated whether the Judiciary had areas designated for storing current, semi-current and non-current records. The responses of the deputy registrars, executive officers, records officers and court assistants are shown in Table 4.5.

Table 4.5: Summary of Responses on Records Storage

Respondents	Response
R.1	Records storage space is a big problem which has persisted for so long and files with several volumes are put on top of tables.
R21	Space in the Judicial Review Division is not totally utilised because this being a newly created division, records are not so many.
R13	Space in Civil Division is a critical challenge bearing in mind that civil is the mother of Family and ELC divisions hence current and semi – current records are put together causing delays in the retrieval of needed records.
R.7	Due to inadequate space for records storage, sensitive records are maintained in the congested registries making accountability and transparency of records unachievable.

In some divisions, current records were kept in registries while semi-current and non-current records were stored in the archives. The registries looked disorganised and

congested due to this arrangement. It was also observed that the registries were in a bad physical state. In civil registry, for instance, when some of the bulk filers stopped operating, some of the files were kept on the tables and floor awaiting fixing of wooden shelves. The situation was similar in the criminal registry. Observations showed semi-current records that were heaped in a corner without any order waiting to be dispatched to archives for storage.

4.5.4 Storage Facilities and Equipment

Questions about the storage of records at the Milimani High Court and nature of facilities and equipment were raised. Most of the respondents, registry staff identified wooden shelves as the equipment mostly used to store records. The other storage equipment identified were bulk filers and steel cabinets. It also emerged from the record officers that steel cabinets were used to store sensitive records like title deeds and logbooks which were produced in court as evidence to support the case. It was also reported that the bulk filers broke down often and took a lot of time and money to repair or maintain them.

Also, the bulk filers could not allow several staff to access files at the same time. They are used in turns thereby delaying the retrieval process. Nonetheless, they were best suited to keep away dust, light and pollutants since they are completely sealed. Thus, it is evident from the data that the Judiciary does not have adequate records storage equipment. The findings, therefore, show that wooden open shelves allow dust from within the storage area to get directly into the records. The impression reveals that the High Court has not given priority to acquiring equipment which can provide proper maintenance of the records. Accumulation of dust into the court records weakens the files and may lead to loss of information.

4.5.5 Security of Records at Storage

Different responses were provided regarding the security of records. Some of the respondents, registry staff stated that records stored in bulk filers were quite safe. Another reason they gave was that concluded matters, which were transferred to archives, were maintained by a records officer who ensured that the room remained locked to keep off unauthorised access and more so to ensure security of records. It also emerged from the records officers that the use of Closed-Circuit Television (CCTV) on the corridors and other areas further enhanced the security of the files in those areas. However, one respondent an executive officer had a contrary opinion as he felt that since all the registries were also used as work spaces by multiple staff thereby making it difficult to ensure optimal security of the records therein. One particular respondent (R18) had this to say:

> *"This is an open registry where any staff can remove a file and maliciously misfile; due to High workload, one may be stressed and misfiling can occur".*

Security of the records was therefore not guaranteed because any staff could access the filing area. It was not possible to limit file reception and storage to individual staff. There were also situations which required court users to be served from the registries thereby compounding the problem further. Indeed, researcher observed cases where clients passed through filing areas.

The respondents went on to say that in some instances where the space problem was acute, clients were served inside the registry working area where records were sorted out and arranged before being filed back to the shelves. This was corroborated observation by the researcher that in two divisions, clients passed through filing areas to access services because service counters could not accommodate all work. Therefore,

where a client wanted to peruse his matter, he was given a seat to peruse the file right inside the filing area.

Another respondent (R22) stated that:

> *"shelves and cabinets are not adequate and some files are placed on top of cabinets while some sensitive documents, for instance, exhibits produced in court could not be accommodated in the few cabinets, thus exposing the security of such records".*

The respondents also reported that at the time of the study, two bulk filers and one cabinet were not usable compromising the security of the sensitive records further. On missing files, a respondent (R26) noted that the challenge is because of inadequate storage space. This was rampant when files were kept in temporary storage awaiting return back in the shelves as earlier reported in 4.5.5. It was also observed that in the divisions which the spirit of transformation had picked up cases of missing files were rare.

One other respondent, R4, reported that in two months, as many as five files could go missing but, in most cases, due to misfiling as a result of inadequate space. Similarly, one deputy registrar in testified that at the time of the study, only two files were missing and the staff were committed to searching for them. From the findings, it is revealed that the installation of the CCTV has enhanced the security of records from external access to the storage areas. The finding confirms that after the launch of the Judiciary Transformation Framework, few files have been reported as missing. This means that staff have embraced integrity and culture change towards better records management practices. From the data presented, it is clear that records storage at Milimani High Court experienced immense challenges that if left unsolved would affect service delivery and inhibit the ongoing transformation process in the Judiciary. Therefore, the

Judiciary should put in place a controlled records centre to cater for the escalating litigation.

4.5.6 Records Appraisal and Disposition

When court assistants were asked about appraisal programme for court records, they explained that appraisal was conducted by archivists and that they were in a better position to answer the questions. Records officers also gave divergent opinions on the appraisal of records. The responses are shown in Table 4.6.

Table 4.6. Programme for Records Appraisal

Respondents	Response
R.9	Appraisal and disposition of records is done when the division is preparing for a service week. That is when files which are dormant are identified and placed before the judge for dismissal orders while the concluded cases are transferred to the archives for storage.
R 23	Dismissed files qualify for disposition as per the provision of Records Disposal Act Cap 14 of the Laws of Kenya. Those which are still required are taken to the archives. However, the procedure used to be that such files earmarked for permanent preservation were transferred to the Kenya National Archives and Documentation Service (KNA&DS) for storage but currently, it is experiencing storage space constraints.
R.18	There is a programme for records appraisal and disposition. Nevertheless, there is a huge backlog of records which needs to be worked on but the archivists are few. Thus, they cannot cope with the current backlog at once.

The following response summarises the state of records appraisal and disposition at the Milimani High Court:

> *"Records appraisal and disposition is done at the station level or divisional level at the convenience of the records officer or the in-charge of station. Most of the stations have experienced accumulation*

of backlog and delay in conducting appraisal and disposition exercise. There is therefore a big discrepancy, of the state of records appraisal and disposition in the Judiciary".

4.5.7 Disposal Procedure

The procedure for disposing court records is stipulated in the registry operation manual. It is as follows:

i. "Physical audit of case files is conducted after conclusion of the cases to ascertain whether they qualify for disposal or permanent preservation as per the guidelines provided for by Records Disposal Act;

ii. The audit is triggered by maintaining a bring-up register to be informed by the retention and disposal schedule maintained in the registry archives;

iii. The case files identified for disposal are then listed. A draft gazette notice is then prepared for cases destined for disposal and submitted to the chief registrar or other designated officer to facilitate gazetting and publication;

iv. The publication is done at the Kenya government printer after which the archivist communicates to the responsible registry or court upon gazetting, the date of gazetting and gazette number of the intended destruction;

v. On expiry of three months after gazetting, the court makes a request to the Hon Chief Justice seeking authority to destroy the records, books or papers in respect of which the gazette notice was issued, and once authority is granted, the archivist ensures that the disposal authority is communicated to the court's registries within twenty-four (24) hours."

One respondent (R36) was asked how the records are destroyed after authority has been granted, and she had this to say:

> *"All records to be destroyed are burnt in the presence of a magistrate or deputy registrar or any other authorised officer. The said officer*

> *makes an entry in the court register in red the letter "D" and the date
> of destruction against each case particular".*

Because of environmental concerns, the court seeks authority from the National Environment Management Authority (NEMA) to burn the records. Once destroyed, the concerned officers submit a certificate of destruction. The archivist maintains a register of all the destroyed records. The details of the records documented in the register include the details of the record as well as the date of destruction and the authorisation thereof.

To confirm compliance with the procedure, the archivist from the criminal registry was asked to explain the records disposal procedure. The explanation provided matched that outlined in the manual. The discrepancy is that the archivist was not sure whether the certificate of destruction was supposed to remain in the station or be sent to the office of the Registrar Magistrate Court Nairobi, for permanent keeping. Another observed weakness was that the retention and disposal schedule was not available at the time of this study. The court assistants were not sure of the contents of retention and disposal schedules. The findings of this study reveal that there is a clear set of procedures on retention and disposal of records in the Judiciary. However, it was also evident that the procedure was not executed in all courts due to various challenges as earlier discussed. The findings indicated that the archivists were occasionally engaged with appraisal of court records and that they were guided by Records Disposal Act Cap 14 of the Laws of Kenya. The Act was also applied in criminal cases where the sentence imposed was less than 12 months. Such petty cases were disposed of to give room for storage of preserved records. In support of the above Act, matrimonial cases must be preserved in order to serve the current and future generations.

4.6 Establish the Available Infrastructure to Manage Records

The third objective was to establish the available infrastructure to manage records.

This section presents data on the status of records management infrastructure at the

Milimani High Court. It covers such infrastructural issues as:

- Skills and competencies;

- Policies and guidelines; and

- Finance and budget.

4.6.1 Skills and Competencies

It is important to have qualified records management professionals to execute relevant

policies in any organisation, including the Judiciary. Essential level of training –

certificates and diplomas – is necessary to build the capacity of the staff to perform

their duties effectively. Such staff play an important role in managing registries where

the bulk of records management tasks is performed. They also support the management

of archives. It was equally important to determine the academic qualifications of the

staff responsible for the managing record in all the 3 divisions. Table 4.7 lists the

qualifications of the records officers the Judiciary.

Table 4.7: Highest Formal Education Qualification for the Staff Managing Records in Registry

Highest Formal Education and Qualification		
	Frequency	Percentage %
O Level Certificate	10	52.6
Diploma in Records Management	5	26
Degree in Records Management	4	21.4
Total	19	100

As indicated in Table 4.7 it was established that the Highest academic qualification 10 (52.6%) of the registry staff was O-level qualifications without any training in records management. There were5 (26%) had diploma qualifications in records management. Only 4(21.4%) of the registry staff had undergraduate qualifications in records management. This implies that a large percentage of the registry staff at the Milimani High Court have no professional training in records management. These findings concurred with the findings of Maseh (2015) which Highlighted inadequate skills and knowledge in records management of the registry officers as one of the challenges facing the Judiciary.

The executive officers confirmed that the Judiciary lacked an adequate number of records staffs. The judges also underscored the need for more records management staff. They reported that the existing professional records staff were deployed in storage areas leaving judges to be served by executive assistants and clerks. Unfortunately, this category of staff did not have any formal training in records management. They were only trained on the job. Respondent R22 expressed displeasure with untrained staff handling registries. When the court assistants were asked if they attended records management workshops or conferences, they responded as shown in Table 4.8.

Table 4.8: Responses on Facilitation to Attend Conferences and Workshops

Respondents	Response
R.7	A two-week training, I was sponsored to attend did not cover all aspects records management comprehensively.
R3	I once attended a three-day workshop on e-diary but I was not introduced to records management.
R18	The Judiciary has never sponsored me to attend any conference or workshop on records management.

On presence and use of a training policy, almost all the respondents concurred that the Judiciary did not have a training policy. They explained that all essential training needs were handled by the Judiciary Training Institute (JTI). The training was mostly conducted for the newly appointed judges and magistrates. However, one respondent (R.16) reported that:

> *"Records management has recently been incorporated into the modules to be offered in the near future hence the Judiciary would train its records officers so as to deliver justice efficiently and effectively".*

Consequently, the findings presented showed that the Milimani High Court lacks an adequate number of trained records staffs regrettably, staff have to arrange and pay for their own training. Notably, these personnel were wrongly designated and placed in the archives even after get training to manage records. The findings revealed that most of the staff managing records in the registry possess O-level certificate while the available archivists are left to work in the archives where semi-active and non-active records are kept. From the foregoing, it is clear that professionals in records management in the Judiciary are not given a chance to utilise their skills to manage records in their active stage where they are frequently referred to by litigants.

4.6.2 Existing Records Management Policies and Guidelines

When the question on existence of records management policies was posed to the judges and deputy registrars, some of the High Court judges pointed out that there were no records management policies in the Judiciary apart from the High Court Registry Manual and the draft policy which has been pending for approval since 2016. However, a number of the deputy registrars indicated that there is a draft policy for records management which has not been fully approved. Similarly, some of the executive officers interviewed reported that the Judiciary did not have a record management

policy in place though they had several meetings where they raised the need to have one in place. On the other hand, some of the court assistants and court users (advocates) agreed that there was no policy in place as they complained that court files were not properly stored and there was inadequate space for perusal of files. Almost all archivists were of the opinion that the High Court Registry Manual and the Records Disposal Act Cap 14 (Laws of Kenya) partly served as a records management guideline since the current draft policy has not been approved for use.

Additionally, one respondent (R30) stated that:

> *"Most of the people thought the experience and exposure on the job training had assisted them to manage the records well. Further he stated that he assumed the duties he performed and tracking files appropriately meant that there was a policy in place".*

When the researcher asked the judges and deputy registrars whether there were any guidelines for records management in place, they all agreed that the High Court Registry Manual was in place though some of the newly employed staff had not been sensitised on the manual. They, therefore, responded that plans were underway to sensitise the new staff on the availability and use of the manual. Additionally, they indicated that as a matter of urgency, there was need for the records management policy draft to be completed and implemented since they felt that the manual should be anchored on a policy platform. The findings from the data collected revealed that staff were being guided by the High Court Registry Manual, Records Disposal Act (Cap 14), Judiciary Transformation Manual, Sustaining Judiciary Framework and other guidelines like the Civil Procedure Act to manage court records. Although the newly recruited staff had not been sensitised on the manual. They reported that they were being mentored by their seniors. Some deputy registrars agreed that there was a records management draft policy which was still under discussion by the top management. In

support of the response by the deputy registrars, the draft policy will only be applicable once the top management have approved the draft for implementation.

4.6.3 Finance and Budget Infrastructure

The findings revealed that there was no budget allocation dedicated to records management. In this regard, one respondent (R8) stated that whenever a financial request was made regarding records management the chief accounts controller directed that the request be charged in the development vote. For instance, repair and maintenance of bulk filers was charged under accounts vote while the newly acquired wooden shelves were charged under development vote. It was noted that repair of the storage facilities was carried out after the High Court registrar made several attempts to get records management budget which was never provided.

Similarly, when the deputy registrar was asked under which vote they charged the records management activities, for instance, appraisal and disposal of court records, she responded that she experienced many challenges whenever she needed finances to cater for records management activities. On several occasions, record management was charged under the accounts vote. In addition, when the archivist was asked by the researcher whether survey and appraisal of court records was budgeted for, he responded that such activities were charged under the Registrar Magistrates Courts budget. He clarified further that this happened only when there was ample funding. When there was no adequate finance, appraisal and disposition of court records was not conducted causing congestion in the registries.

Further, the archivist disclosed that the absence of a records management directorate had caused the records management department to remain silent in the organisational structure. Therefore, the challenges facing the records management department are not

appropriately addressed. At the time of the study, the researcher was able to peruse the Judiciary Annual Report (2017/2018) which was provided by one respondent. This researcher observed that during that financial year, the Judiciary had one programme referred to as "'Dispensation of Justice' which is sub divided into two sub-programmes namely: 'Access to Justice' and 'Administration and Support Services'". The researcher observed that more funds were allocated under 'Access to Justice' sub-programme to facilitate the dispensation of justice is anchored.

From the findings, therefore, the researcher noted that the Judiciary did not provide budget allocation for the records management programme. In order for Judiciary to meet its records management work plan therefore, the Government of Kenya should provide the requested budget so that the records management programme can be implemented in order to enhance justice delivery.

4.7 The Contribution of Records Management in Supporting the Judiciary Transformation Process

The fourth objective was to determine the contribution of records management in supporting the judiciary transformation process.

For further clarity on the transformation process, the researcher sought data on the performance of the Judiciary. From a review of the Sustaining Judiciary Transformation document, statistical evidence of the performance was obtained which was largely measured by the number of cases pending hearing commonly referred to as case backlog. From the study, it emerged that there was a huge backlog of cases yet to be heard in almost all the divisions studied. One judge explained thus:

> *"Case backlogs cause undue delays in accessing justice which affects both the accused persons and the witnesses".*

Another High Court judge who reported that she experienced case backlog in her division was asked to explain what backlog meant and if she could provide backlog figures if any. She promptly responded that backlog describes the set of cases pending conclusion in the courts for a year and are still unresolved.
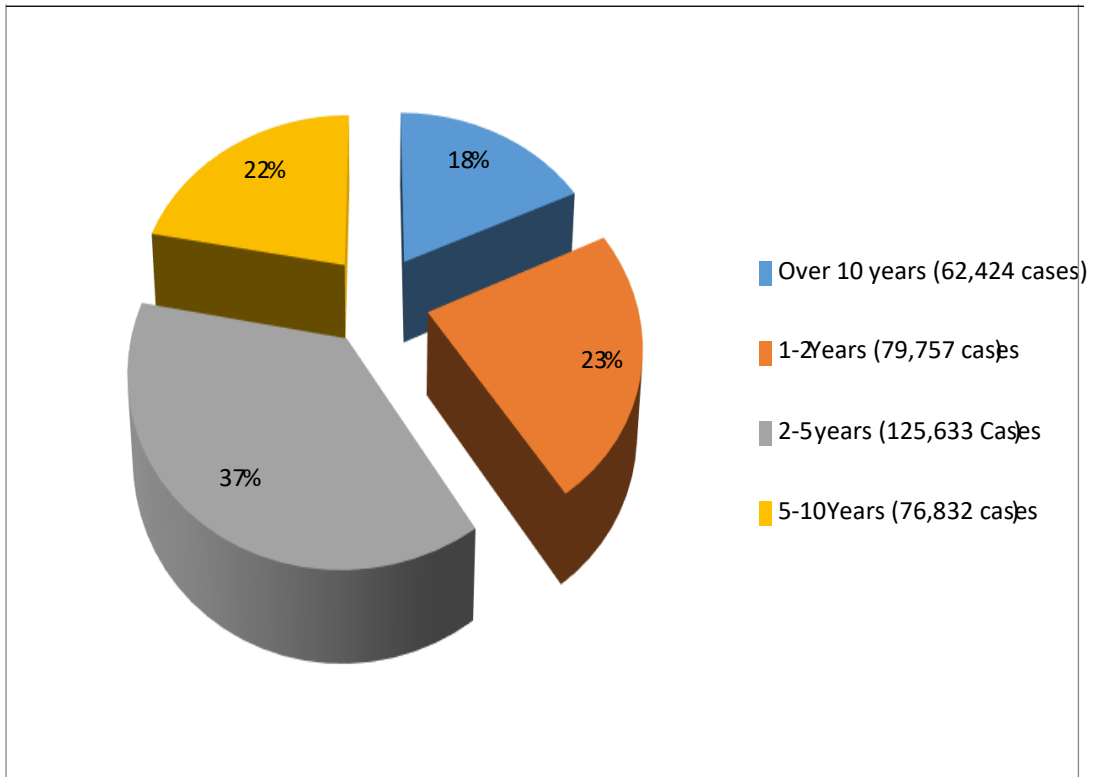
Figure 5: Percentage Backlog of Cases By Age

She provided monthly returns together with the annual reports from the directorate of performance management which stated that during FY2015/16, the total case backlog (cases over one-year-old) stood at 344,658. Out of this, 79,757 were between 1-2 years old; 125,633 cases were aged between 2-5 years; 76,832 cases were over 5 years and 62,424 cases were aged 10 years and above.

The backlog cases by age in percentages are summarised in Figure 6.

Table 4.9: Case Backlog by Age and Court Type

Case type	1-2 years	2-5 years	5-10 years	over 10 years	All backlog
Supreme court	27	7	0	0	34
Court of appeal	714	731	472	62	1,979
High Court	18,667	34,697	21,650	25,738	100,764
ELRC	2,815	2,667	687	25	6,194
ELC	4,801	8,733	2,267	644	16,445
Magistrate court	52,293	78,433	51,639	35,955	218,320
Kadhi court	440	365	117	0	922
All courts	**79,757**	**125,633**	**76,832**	**62,424**	**344,658**

One of the Court assistant (R17) from Milimani High Court reported that the

Magistrates Courts and High Court have the Highest backlog at 218,320 and 100,764

respectively. One of the greatest concerns in the case backlog are the cases which are

over 10 years' old which were 62,424 as shown in table 4.9 above. Having admitted

that they had case backlog in the court stations, all the respondents were asked to point

out the possible reasons for the backlog. They gave the diverse responses in Table 4.10.

Table 4.10: Number of Responses of Case Backlogs in the Judiciary of Kenya

Reasons for backlogs	Number of responses	%
Lack of tools and equipment	4	6.35
Poor records management	15	23.81
Poor use of ICT	10	15.87
Corruption in the Judiciary	1	1.59
Inadequate record staff	15	23.81
Inadequate judicial officers	18	28.57
Total	**63**	**100**

Notably, from Table 4.10, it shows that 18 (28.57%) of respondents held the view that

inadequate judicial officers caused case backlogs. Similarly, 15 (23.81%) indicated

inadequate record staff as the cause of backlogs while 15 (23.81%) cited poor records management as the cause of case backlogs. Further, 10(15.87%) cited inadequate use of ICTs. Finally, one (1.5%) respondent cited corruption as the reason for case backlog in the Judiciary. The executive officers and records officers agreed that poor records management somehow contributes to case backlogs. One respondent (R.19) had this to say:

> *"Case backlog has been there since 1980s when court records used to be kept on the floor due to inadequate filing space. However, records management department has never been given the space it deserves since staff handling records were, more of senior support staff and staff with disciplinary cases. For instance, archivists have been pushing for a records management policy which should provide direction on proper management of court records from creation all the way to disposition".*

Lack of space, inappropriate equipment, and inadequate training personnel pose a big challenge to records management hence backlog of cases continue to accumulate. The judges and deputy registrars agreed with the executive officers that poor management of records contributes to case backlogs in Judiciary. One secretary indicated that Magistrate Courts and High Courts had the High number of case backlog. Additionally, when the Executive officers and Records officers were asked the reasons for case backlog they consented and stated that to some extent records management has not been given the space it requires to effectively manage records.

When judges and deputy registrars were asked of their opinion on the contribution of records management to the Judiciary transformation, two major contribution of records management were identified by all: reduced case backlogs and missing files. Their opinion on the value of records management in justice delivery was sought and their responses are summarized by Figure 6 below.
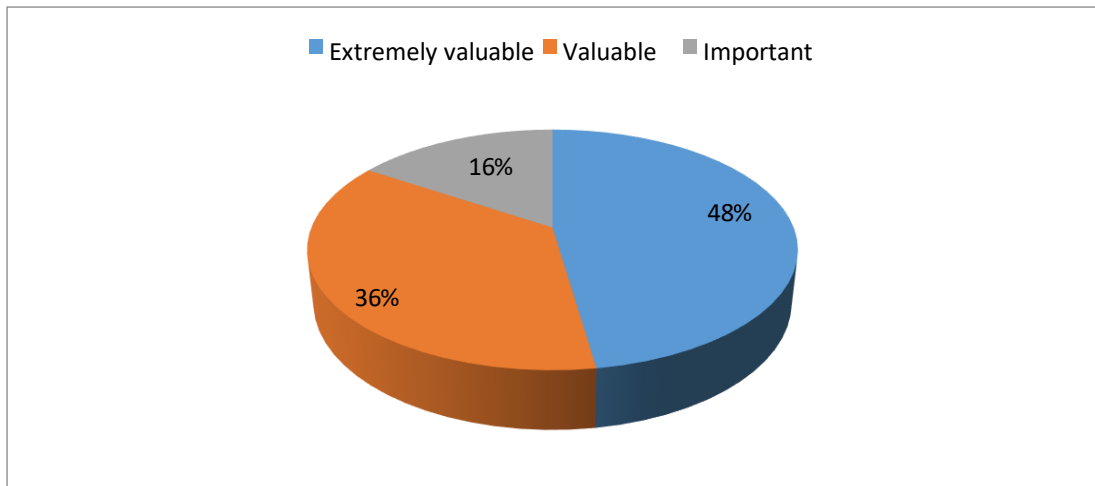
Figure 6: Contribution of Records Management to the Administration of Justice and Transformation

According to Figure 6, (48%) respondents pointed out that records management was extremely valuable in the administration of justice at Milimani High court. (36%) opined that it was valuable, (16%) while none of the respondents indicated "not important". Ultimately, this indicates that the Judges and Deputy Registrars valued records as a significant contributor to the delivery of justice. During the interview of judicial officers one respondent (R29) expressed the value of records management through his own testimony:

> *"Records management is the application of systematic and scientific control to all the recorded information an organization needs to do business. For instance, in Judiciary, records play a critical role in administration of justice since the driving force of justice delivery is anchored on proper records management. Additionally, a viable records management programme will enable the Judiciary to create, use, maintain and dispose of records efficiently and cost effectively. In deed loss of control on court record make it impossible to prosecute cases of corruption and fraud, hence proper record keeping systems should be practiced so that records management to contribute positively towards Judiciary transformation process".*

4.8 Challenges Experienced in Judiciary Regarding Records Management

Having gone through the status of records management and transformation, during the study, the researcher posed a question regarding records management related

challenges that the Judiciary faced as it tried to transform itself. The responses were as indicated in Table 4.11.

Table 4.11: Challenges Experienced in Judiciary Regarding Records Management

Challenges experienced in Records Management	Frequency	Percent
Delayed approval of record management policies and guidelines	15	23.81
Inadequate storage space and equipment (funding)	18	28.57
Ineffective records management systems	10	15.87
Inadequate trained personnel	20	31.75
Total	**63**	**100**

The majority of the respondents interviewed identified inadequate storage space and ill-trained personnel especially among the paralegal staff as some of the challenges they faced. Delayed approval of records management policies and guidelines, inadequate storage space and equipment, as well as ineffective records management system were also cited.

Based on the identified challenges, the study sought to determine possible improvements that can be applied to improve records management in the Judiciary of Kenya.

Below are the Proposed Strategies:

• Providing adequate equipment for live recording proceedings in all court rooms. This can help the judiciary to fast track the proceedings taken in court during the hearing of cases. By so doing authentic and reliable proceedings will be readily available immediately a matter is concluded. This saves time for the registry staff who take some time proof reading the judge's handwriting and afterwards take the proceedings to the typing pool for amendments.;

- Offer refresher courses to the records management staff. Refresher training can help them feel more confident and competent in their roles, leading to increased job satisfaction and better job performance. It also improves productivity, reduce errors and accidents, and enhance the overall quality of work.

- Formulation of records management policy. It makes records retention and records storage decisions more defensible. If an auditor or investigator looks at the policy, they will see the rationale behind the requirements. It also provides the institutional memory of the regulatory and business environment that led to the policies, along with the record keeping Knowing how that environment influences institution's information governance will enable the people who inherit the policies to make more informed decisions about what to modify or remove, so they can avoid changes that could land the organization in trouble.

- Sensitising staff and management on the importance of records and records management to enhance administration of justice and transformation; and constructing records centres in strategic regions to reduce congestion in registries.

- Computerising the records management systems, facilities and processes. This would ease the tracking of records managed at registries and also enhance accountability. The records management department should be fully facilitated with an operational policy to control records from creation through maintenance to disposition. Adequate provision of qualified staff to conduct the appraisal of the records in order to dispose worthless records and preserve valuable records. Records constitute one of the most important resources an organization needs to conduct its operations effectively such as to formulate policy and to make decision.

- Some of the ICT staff interviewed advised that the automation of the court registry function is a critical step towards achieving improved delivery of justice,

transparency and accountability. They said this will significantly accelerate the disposal of cases to the benefit of all actors in the justice sector. Key projects to be implanted include e-filing and a case tracking system (CTS) for selected registries in Nairobi, Milimani and Mombasa.

The judges, deputy registrars and the human resource director also proposed several solutions in order to spur Judiciary transformation as shown below:

- Capacity building which includes deployment of adequate and professionals in records management unit so that they embrace knew knowledge and skills acquired to perform their duties well and achieve prompt justice delivery;

- Sensitising the public on the mandate of the Judiciary. This can be done through holding the High court Service week which invites the litigants, advocates and other state holders to give their grievances, opinions, compliments and views on how to improve on justice delivery to achieve transformation process. Similarly, advertisement of the new products of case management can be done through the social media or the radios. some of the products are, Alternative Dispute Resolution which arbitrates matter within a shorter period as compared to the normal due process;

- Increased funding this will ensure that more judges are deployed to assist reduce the case backlog and determine matters within shortest time possible so that the clients get their relief without undue delay. More so increased funding will provide for training of registry staff om better practices as well as deployment of adequate professionals in records management to boost records processes according to the Kenya Law, Cap 14 & Cap 19 respectively; and

- Provision of adequate infrastructure. Court records are not easily retrieved due to congestion of records in the available repositories. A modern Records Centre will

accommodate valuable cases identified for retention. More so, semi current records should be relocated to archives to give room for the active records which are created in the registries. Also construction of adequate court rooms to improve access to justice to Kenyans all over the country.

- Adequate provision of modern hardware/software to cater for faster registration of court cases in the system. Upgrading of the Case Tracking Systems so that data can be easily, retrieved and disseminated to action officers. Customer care desk, Ombudsman Online Service Desk and ICT help/support desk staff should be trained on Public relation courses as they are the eyes of the judiciary when they are dealing with customer's needs.

4.9 Discussion of Findings

The findings showed that case files and exhibits were the key types of records created at the Milimani High Court, Nairobi. Court files contain vital information which must be safeguarded from the time of registration, maintenance and for use by the stakeholders. Therefore, such documentation must not be accessed by unauthorised staff or by external parties. In as far as the Records Continuum Model is concerned, records must be managed right from creation to their disposition. This, therefore, calls for a sound records management programme that ensures that court records are managed well. IRMT (1999) pointed out that sound records management in the courts is the foundation upon which government and citizens can enforce their rights. Exhibits contain facts which support litigation. Their loss or misplacement can jeopardise the petitioner's case. It is, therefore, important to ensure that court files and exhibits are Highly valued and their safety and availability is guaranteed. For instance, a title deed or logbook must be safely guarded to support the hearing of a case.

The High Court Registry Manual, Judiciary Transformation Framework, Sustaining Judiciary Framework and Records Disposal Act Cap 14 of the Laws of Kenya have been used as guidelines for the creation, maintenance and disposition of court records as revealed by registry staff. The records management policy draft is still under discussion. Therefore, the Judiciary does not have a reliable policy. This contravenes the records management best practices.

ISO 15489 (2016) asserts that any organisation "seeking to put in place a sound records management strategy should first and foremost establish, document, maintain and promulgate policies, procedures and practices for records management to ensure that its business needs for evidence, accountability and information about its activities are met. On the other hand, the Civil Procedure Act Cap 21 of the Laws of Kenya states that records should be numbered numerically according to the order in which they are created". It was noted that the filing system was fairly good and this enhanced the retrieval and use of needed case files. This is supported by Kanzi (2010) who laments that information is always underestimated as a key resource in enabling the accomplishment of organisational goals, yet decision making and all that needs to be undertaken in any organisation is pegged on the availability of records and reference to the information held in them.

As mentioned elsewhere, adequate records storage must be given priority by all government institutions and non-governmental organisations since proper accommodation guarantees efficient retrieval of records. The current study established that space and accommodation for records was a major challenge experienced by records officers at Milimani High Court. The findings concur with findings of previous studies such as Maseh (2015) that found that storage of records was a major challenge

at the Judiciary. According to ISO 15489, "the storage equipment for records should be able to protect the records from destruction".

As earlier revealed, appraisal was not done regularly due to the fact that there was no proper guideline. Appraisal was conducted only when there was need to relocate non-active records to the archives after the registry was full. This partly hindered the transformation process. According to the National Archives of Australia (2000), at the heart of a legally compliant records management programme is the records retention schedule. This policy guides on how long records are supposed to be kept, appraised or disposed of.

The findings revealed that the Judiciary did not provide funds for records management programme despite constant requests made by the deputy registrars to the chief accounts controller to allocate budget for planning and conducting an appraisal survey and disposition of court records so as to create space for the active records. However, it was noted that the registrar of the High Court had made several requests for funding to cater for the proper management of court records. Dibble (1986) indicates that records management is an important discipline that contributes significantly to effective court administration. The justice system may fail when records are not created, properly maintained and made accessible, if and when needed. This calls for adequate funding for proper management of both paper-based and electronic records.

The findings of the current study have revealed that the frequency of missing files has gone down though still few instances of misplaced files due to congestion of files in the registry and in the repositories. The court assistants indicated that files were not completely lost but were rather misfiled due to poor storage facilities as well as inadequate storage space causing some court files to be kept on the floor and on tables.

Kennedy (1998) pointed out that the ability to effectively locate and retrieve records required in the course of a business is a key component of any records management programme.

4.10 Chapter Summary

This chapter presented, analysed and interpreted the data that was collected. The findings in this chapter are significant as they bring about an understanding of the contribution of records management to the Judiciary transformation process at Milimani High Court Nairobi, Kenya. The study established that there is no records management policy to govern records management practices and that the court records are at risk of destruction or loss since they are heaped on tables in the registry. Furthermore, unauthorised staff can access such records leading to loss of such court files. Therefore, their security is not guaranteed. The staff dealing with records management do not possess the right knowledge and skills since the few trained records managers are assigned duties to manage archives. Therefore, the court records are not professionally managed hence mutilation and misplacement of files occur. The staff recommended that they should be trained in records management and that the top management should support the registry by providing adequate storage and equipment to properly file the court records. The case tracking system had not been rolled out to all registries. Therefore, delayed justice was still experienced at the Milimani High Court.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter presents a summary of the findings based on the research questions of the study. It also presents the conclusion and recommendations of the study as well as suggestions for further research. Below are the research questions:

1. What types of records are maintained at Milimani High Court?

2. How effective are the Records management practises?

3. What are the available infrastructure to manage Records?

4. How has records management contributed in supporting the judiciary transformation process?

5. What strategies can be proposed to improve records management to enhance the judiciary transformation process?

5.2 Summary of Study Findings

Below is the summary of study findings based on the research questions.

5.2.1 What are the Various Types of Records Maintained at Milimani High Court?

The study established that court files are constantly used by judicial officers in the administration of justice. Further it was revealed that exhibits are also relied upon during the hearing of cases. Exhibits provide facts useful in the determination of the suits. The records staff indicated that case files and exhibits must be Highly safeguarded to avoid misplacement or loss which may hinder the progress of the relevant court cases.

5.2.2 How Effective are the Records Management Practices?

The findings of the study have shown that the Milimani High Court relied upon the court files to dispense with court matters. There was no formal policy on how to create records. However, the Judiciary has a draft records management policy which is still at the discussion stage. This means that the court assistants learnt from their seniors the skills on how to create records. This also means inconsistency in terms of standardisation in records creation.

Nearly all registries did not have designated spaces for storing records. Consequently, current, semi-current and non-current records were all stored together. This created a disorganised appearance as earlier stated. Similarly, there were files which were heaped on floors awaiting sorting. This caused misfiling and misplacement of court records thereby hindering prompt retrieval of records and causing delays in the administration of justice to clients.

Records at the Milimani High Court were fairly safe due to the fact that there were CCTV cameras installed in the corridors, open court and registries. Access to most registries was restricted to staff only and for those charged with the responsibility of manning the filing section. For the records which were heaped on the floor and on top of cabinets, their security was not guaranteed. This compromises the contribution of records management in supporting the transformation process since misplaced or lost documents ultimately lead to a miscarriage of justice to litigants.

The findings of the study showed that records at Milimani High Court were appraised and disposed using provisions of the Records Disposal Act Cap 14 of the Laws of Kenya. As earlier indicated in section 4.6, the Judiciary did not have an operational records management policy. There was a draft policy which was still under discussion

by the top management. Therefore, the decision on when to appraise or dispose records was left to the archivists. It was noted by one archivist that when funds were not available to conduct a survey and appraisal, no such activities were undertaken until that time when the funding was available. The findings further revealed that archivists had other responsibilities, for instance, participating in various service weeks to reduce case backlog. Therefore, appraisal and disposal was not regularly done causing most worthless records to continue occupying storage space unnecessarily. This, therefore, calls for a policy to guide appraisal and disposal of court records.

5.2.3 What are the Available Infrastructure to Manage Records?

The findings of the study showed that the High Court did not have records management staff who are adequately trained to cope with the accumulated records as the litigation escalates to Higher levels (See chapter 4 section 5). It was observed that while trained records officers managed semi-current and non-current records, executive officers and courts assistants managed the registries.

5.2.3.1 Policy

The study established that staff relied upon the guidance of the Judiciary Transformation Framework and Sustaining Judiciary Framework. The framework aimed at achieving access to and expeditious delivery of justice to all. The study further revealed that the Milimani High Court staff were also guided by the High Court Registry Operations Manual which was in place. The manual contains all the procedures in records management though it does not cover online correspondences which are officially communicated to the registry staff. Nonetheless, in some registries there were challenges of inconsistent storage arrangement for files leading to misfiling

of records and lack of standard practices with almost every staff having his/her own way of managing records in their custody.

5.2.3.2 Finance and Budget

It was revealed that records management was not allocated funds to cater for proper creation, maintenance, access, appraisal and disposition of court records. Poor record keeping practices weaken records management processes thereby causing a delay in the retrieval of information which also attracts corruption. The study further revealed that top management did not provide full support to records management in as far as resources, capacity building and infrastructure development were concerned. Implementation of good record keeping practices ensure prompt access of court files, destruction of worthless records and ensure preservation of valuable records. Notably, facilitation of adequate and fire-proof equipment provides safety of exhibits produced during the hearing of cases.

5.2.4 How has Records Management Contributed in Supporting the Judiciary Transformation Process?

It was revealed that the transformation agenda was geared towards prompt access to justice which is a central pillar requiring the administrative infrastructure and financial intervention to realise it. However, the Milimani High Court had started procuring computers for various registries to be used in prompt typing of proceedings for appeal purpose and capturing the outcome of cases; procured laptop for the judicial officers and legal researchers who spend their time searching for legal materials and authorities produced in other similar cases; networking of the computers both through a Local Area Network (LAN) and linking them to the Internet; and fitting of voice recorders in court rooms so as to promote fast justice delivery to the stakeholders. The Judiciary's website

is widely used to communicate with clients, particularly, when the clients complain of their case not listed in the daily cause list. The case tracking system has enhanced fast access, retrieval, dissemination and finally deliver justice promptly to stakeholders. Similarly, DCRT has enhanced security of data and back up by so doing every Judge is able to account for the number of cases he/she has handled thereby reducing case backlog. More importantly, the judiciary is able to get proper statistics of the pending cases from the system which enables the JSC to make appropriate decisions from the CTS and case auditing. The JSC is able to decide whether to increase number of Judges to fasten the prosecution of pending cases.

5.3 Conclusion

The Milimani High Court is a beehive of activities. Litigants and advocates assemble in registries and at the counter to file cases for adoption of award, compensation of damages or for breach of contracts by parties. Court files are frequently accessed or used by all staff at Milimani High Court as the core business of the court is to administer justice to the stakeholders. If records are central to the administration of justice, then they need to be properly managed. This is possible when there is a central office or department that is responsible for their care. Thus, from the finding, the High Court lacked a records management unit which would ensure the safety of all types of records created at Milimani. This undermined the contribution of records management to the transformation process.

Further, exhibits were also regarded as crucial court records which were legally relied upon to provide evidence during the hearing and determination of suits. Court registers and court summons were also considered as vital court records. Therefore, court records

are a key component in the delivery of justice. Their availability, irretrievability and authenticity confirms the protection of citizen's rights.

In examining the records management practices, the study revealed some weaknesses which hindered the contribution of records management towards transformation process at Milimani High Court. They include lack of fully implemented policy to guide staff on creation, use, maintenance, access and retrieval; inadequate records storage space; inappropriate equipment for storing records; missing files; uncoordinated records appraisal and disposal programme; lack of a disaster management plan; and lack of systems for managing e-records. It can be concluded that the lack a policy on records management has led to the staff experiencing difficulties and inefficiencies when carrying out their duties in managing court records. Therefore, there is need to ensure that the records management draft policy is approved and implemented failure to which it will hinder proper management of records which will jeopardise the transformation process

The Milimani High Court is not immune to disasters. There are certain disasters which are likely to affect the court records. These require strategic measures to mitigate. In order to prevent the loss of records in case of a disaster, the institution should identify vital records needed in the access to justice process. These should be digitised, produced in multiple copies and kept in fire-proof facilities in the institution or in an offsite repository or entrusted offsite facility. In conclusion, therefore, the court does not have guidelines for disaster management neither are the staff trained on disaster management. In the event of a disaster, the court runs the risk of losing its vital records. Roper and Miller (1999) argued that preserving the records integrity is another aspect of maintenance. They further stated that the records keeping system within a legal

environment should ensure that information is maintained in a secure environment. They argued that court records are very important and must be available for the administration and legal purposes as well as for informational and research purposes. Court records should be maintained in such a way that they can retain their value.

It was revealed that there was no budget dedicated to records management programme. This compromised good record keeping practices. When semi-active and non-active records are heaped in the registries, it becomes a challenge to efficiently retrieve and disseminate needed court files to action officers thus leading to justice delayed. Adequate budget dedicated to records management should provide for adequate storage facilities for records identified for permanent keeping. Further, the study established that records management programme financial and infrastructure due to inadequate financial allocations.

Again, the study revealed that the Judiciary was implementing the four pillars anchored on the JTF. It is also implementing the SJT to enhance the administration of justice to the clients. Although the study revealed some of the initiatives had been partly implemented, there was need to give priority to sound record management programme through the implementation of records management policy which would ensure records are managed by the right staff through application of good records keeping practices.

In his remarks at the Kenya Judges' Colloquium, Gicheru (2009) admitted that the strength of any judicial institution depends on the standards of accountability. However, accountability can only be demonstrated on the basis of records. The Higher the standards of accountability, the more respect the Judiciary will draw from the citizens and the international community. In conclusion, therefore, the justice system requires good electronic records keeping practices since it helps to bring about a High level of

accountability. Thus, availability of authentic court records should contribute to prompt justice delivery which should support the transformation process at Milimani High Court.

5.4 Recommendations

With respect to the findings of the study, it was established that the Milimani High Court faced a number of challenges in managing court records. These challenges hinder the contribution of records towards the realisation of the Judiciary transformation process. The study recommends:

5.4.1 Application of Best Practices in all Types of Court Records

The study findings revealed that the Judiciary is geared towards embracing sound records practices in order to enhance transformation process. The clients make their requisition for access of court files by way of filling the perusal form thus it gives an indication that the records management system is mainly manual based. This however, calls for adequate online procedures to facilitate quick access, retrieval and prompt dissemination of court files to litigants as well as the judicial officers. Though the physical environment in the registry is appropriate for the management of records, however, the registries are congested and some of the files put on top of dusty cabinets. This also gives an indication that there are potential disasters likely to affect the court records namely; fire, theft of records by unauthorized staff leakages and bombing respectively. Though the Milimani High court has slightly put in place records management practices to mitigate and cope with imminent disaster that are likely to negatively affect the records in the administration of justice such as, fire extinguishers, use of fire proof metal cabinets and locking the registries, yet with all these, the court still needs to adopt strategic measures to mitigate and cope with disasters.

Therefore, the records managers and registry staff should come up with the case management system that is tailor-made for the records at Milimani High Court. ICTs have an enormous potential to facilitate speedier trials and enhance efficiency and effectiveness of justice delivery through data processing, data management and reporting. The records managers in conjunction with the ICT officer, deputy registrar and the principal executive officer should come up with a strategy through which all types of court records to be captured first so that the procedure does not interfere with the normal services accorded to clients on a daily basis. The automation process should include file tracking systems to address concerns emanating from misplacement and misfiling of case files. The registry to remain with active files only and the concluded files to be relocated to archives for easier management of files in the registry. This will also prevent strategic risks arising from inadequate or delayed management decision making due to lack of or delayed access to records from the registry. When records are not readily availed to clients due to difficulties in accessing court files, there is delayed justice delivery which portrays the Judiciary in bad light. Sound record keeping practices of court records will contribute to quick access, retrieval and efficient dissemination of requested files to action officers who will expedite the delivery of justice to stakeholders thus supporting the transformation process. More importantly, the court should create back-ups of all the vital records under its care so that in case of a disaster the court can continue functioning efficiently and effectively. This should be done together with the in-charge ICT department to ensure that records back-up is created and the copies stored offsite and only used when the actual records cannot be repaired. However, the use of digital technology in judiciary as part of the court process will need to be anchored in law.

5.4.2 Effectiveness of Records Management Practices

The study revealed that the Judiciary had formulated a records management policy which was pending approval and implementation. Consequently, the study recommends that the Judiciary should approve and implement the records management policy which should then guide the management of records in all media forms. The policy will ensure that records are well managed right from creation, maintenance, use to disposition and that court records are appraised on time and worthless records disposed to give room for the preserved records. The objective of the policy should be the creation and management of reliable, authentic, complete and usable records which are capable of supporting the courts' functions and activities when required. The policy should ensure that the right storage equipment is used and that there is adequate security for the records either internally or externally by eliminating risks of uncoordinated records management practices. The policy should also provide guidance on proper filing systems. All the registries should enhance access, retrieval and dissemination of requested files to clients who come to peruse and file submissions in the court. The policy should be updated periodically and the staff should be sensitised on the same. More importantly, sensitisation should be done to all employees in Judiciary so that they embrace good record keeping practices.

5.4.3 Infrastructure of Records Management

The top management should assist the records manager and procurement officer by supporting the records management programme through provision of appropriate storage environment and media for the records. Additionally, the records officer should engage the procurement officer and the top management to establish a records centre where semi-current and non-current records should be kept to free up space in the registry for the active records. This should enhance prompt access, retrieval and

dissemination of requested records to litigants and other users. The storage equipment should be of High density, fire-proof and able to protect the confidential or sensitive records. The equipment should be durable, rust free and lockable for security purposes, especially for exhibits. These exhibits must be readily available upon request by the presiding judge. Loss of exhibits may cause the miscarriage of justice. Therefore, safety of court files and such crucial documents should be paramount.

5.4.4 Contribution of Records Management in Supporting the Judiciary Transformation Process.

The study revealed a lack of adequate qualified staff in the records management field. In view of this, the study recommends that the Milimani High Court should adopt numerous strategies which include to identify and recruit staff with the skills and knowledge, undertake training of existing staff with competencies in records management, and conduct awareness programmes to ensure that all staff in the Judiciary are well informed of records management processes. Staff training should be urgently addressed and budgeted for since every staff is involved in the creation of records and their use. Managing court records efficiently and effectively takes commitment, time and effort. This can only be achieved through the use of dedicated and trained staff. The human resource department should organise training programmes to ensure that staff are sufficiently trained and prepared manage records effectively.

5.4.5 Strategies to Enhance the Judiciary Transformation Process

5.4.5.1 Development of a Records Management Programme

The study revealed that there was no disaster management programme in place. Therefore, one should be developed by the records manager to establish standards for records protection since disasters are inevitable and they should be planned for to

minimise risks. The programme should cover all aspects and types of disasters including artificial, man-made and natural ones. The programme should cater for all aspects of paper-based and electronic records preservation and conservation as elements of disaster planning for records within the courts. Similarly, a training programme on disaster management and recovery for records should be developed by the human resource department in conjunction with the records manager for all staff.

5.4.5.2 Constitution of Records Management Team for Internal Monitoring

The study recommends the formation and institutionalisation of records management team in each region to advise on overall records management practices in their respective regions. This Team should be headed by the records manager to ensure that records management programmes adhere to the adopted policies, procedures and available legal framework. In view of this, the study recommends that records management team should then help in monitoring the implementation of records management policies and procedures by all employees in all courts. In case of any amendment in the legal procedures, the team should channel the updates for implementation to all courts.

5.4.5.3 Leadership in Records Management Department

Although records were appreciated as important in the dispensation of justice, the function was not treated as such. For instance, there was no directorate for the function. In fact, records do not exist in the organisational structure. It is recommended that the Judiciary should appoint a records management director who should elevate the status of records management and promote proper records management practices to other directorates in the Judiciary. The director should pursue all the interests of records management in the Judiciary and ensure it is duly recognised especially on important

matters such as recruitment of qualified staff, developing a records management policy and effective budget planning.

5.4.5.4 Budget Allocation for Records Management Department

The findings show that the Judiciary did not have a direct budgetary allocation for records management function. In view of this, the study recommended that the national treasury should allocate direct funds to the records management functions in Judiciary. The funds should be adequate to support development, adoption and implementation of systems and strategies that support sound records management. With adequate budgetary allocations, the Judiciary will be able to acquire sufficient facilities and implement strategies, such as automation, for improvement of records management. The records manager should liaise with the account's controller and finance department so that the records management department can get adequate funding for their programmes.

5.4.5.5 Incorporation of Digital Strategy in the Judiciary Strategic Plan.

The records manager and ICT officer should ensure that the ICT master plan incorporates records management in the E-Judiciary framework. This will ensure that records management are mainstreamed in the framework right from the beginning.

5.5 Suggestions for Further Study

Having explored the contribution of records management to the Judiciary transformation at Milimani High Court, the study recommends that similar study be conducted in other courts for comparison purposes and to enable for generalisation of findings. These studies will contribute to the understanding of the role records management plays in the Judiciary transformation process and how to enhance it for optimal results.

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APPENDICES

Appendix 1: Interview Schedule for Records Officers, Registry Staff (Court Assistants, Secretaries and ICT)

Dear respondent,

I am a post graduate (MPhil) student at **Moi University - Nairobi Satellite Campus**, School of Information Science. I am carrying out a research as part of the requirements for the award of a Master's degree (Records and Archives Management). The title of my research topic. "The contribution of records management to the Judiciary transformation at Milimani High Court, Nairobi, Kenya".

This will be achieved through five specific objectives, namely, to; Establish the types of records maintained at Milimani High Court; Examine the effectiveness of records management practices; Establish the available infrastructure to managing records; Determine the contribution of records management in supporting the Judiciary transformation process;and Propose strategies for improving records management to enhance the Judiciary Transformation Process.

I wish to kindly request you to set aside sometime for an interview which will enable me obtain data that will address the research questions. The information you will provide will be kept in confidence and used only for the current study.

Should you have questions about the research, please, contact me on 0725-240247 or bgmburu2007@gmail.com.

Thanking you in advance for your time and cooperation.

Yours Faithfully,

Beatrice Mburu

1.Background information
i. Please, indicate your Highest academic qualification?..
ii. What is your current designation? …………………….…………....…………
iii. How long have you worked in this position? …………………………......…….

2. Records creation
i. What functions do your division perform? …………………………………….
ii. Please, indicate the types of records created at the Milimani High Court? ………
iii. Please, explain how the records are created? …………………………………..
iv. Please, explain the formats in which the records created? ………………………
v. Please, explain how the records in the different formats are classified? ………....

3. Records access and use
i. Does Milimani High Court have a records management policy? If yes, please, explain its key elements? ……………………………………….........…….
ii. Are there provisions of security classifications or any other restrictions on some of the records in the policy? If yes, please explain them …………………………….
iii. Does the records management policy deliver justice efficiently at Milimani High Court? …………………………………………………………………………
iv. Who are the main users of the records created at Milimani High Court? ………,,,...
v. Please, explain the tools used to search, retrieve and disseminate the records? …...
vi. Is there a tracking system for the records which have been issued out? Please, explain how this is done? …………………………………………......…..……

4. Records maintenance and storage
i. Please, explain how records at the Milimani High Court are filed? ………….……
ii. How do officers maintain records in their custody? ……………………….…….
iii. Which facilities are used to store records in the registry archives? …..………..…..
iv. How do you ensure the security of stored records? ……………………….……

5. Records appraisal and disposal
i. Please, explain the point at which Milimani High Court records are appraised? ….
ii. Please, explain the criteria used to appraise the records? ………………….……....
iii. Please, explain the legal framework on which records disposal at Milimani High Court are based ………………………………………………….........….…
iv. How useful is the retention and disposal schedule as a tool in the management of records? …………………………………………………........………
v. Please, explain how you deal with records appraised and earmarked for destruction? ……………………………………………………….........…....………
vi. Please, explain how you ensure security when records are being disposed? ….....…
vii. Is a records disposition certificate issues for records which have been disposed? Please, explain your answer ………………………………………………..
viii. What role does a disposition certificate for the records which have been destroyed? ……………………………………………………………………

6. Records preservation
i. How does Milimani High Court preserve records? ……………………………,,,,
ii. Are the environmental conditions in the records storage areas monitored and controlled?
If yes, please, explain how it is done? ……………………………….……

iii. What challenges, in regard to preservation are experienced with the following?
Pests ……………………………………………………...
Dust ……………………………………………………………….……....…………
Environmental conditions ……………………………………………….....…..…..
Handling …………………………………………………………………………...
Any other ………………………………………………………………………..
iv. How are the above dealt with? ……………………………………………....
v.   Is a disaster management programme present? If yes, please explain it …………..
vi. Is there a vital records management programme? Please explain ………………….

7. Management of electronic records
i. How do you create electronic records? ……………...………
ii. How do you classify electronic records? …………........................….…………
iii. How do you restrict access to e-records is only by authorised persons? ….....…….
iv. How do you store e-records stored? …………………………………………….
v.   How do you secure e-records? …………………………………………………..
vi. What strategies do you use to preserve e-records? ………………………………
vii. How do you appraise and dispose e-records? ………………………………….

8. Policies, Plans and Guidelines for records management
i.   What policies are used to guide records management at Milimani High Court?........
ii. How often do you review records management policies, if present? …………....…
iii. What role do you play, if any, in the formulation of the records management policies?
iv. Please, explain the responsibilities the policies assign to specific managers and staff for   managing records? …………………………………………. ....
v. Is records management included in the strategic management plan in the Judiciary Transformation? If yes, explain the records management plans which have been identified? …………………………………………………………..................…
vi. Are there any guidelines which guide records management? ……………………...

9. Skills and competencies of records management staff
i   Since you joined the Judiciary, have you participated in any records management training since? ………………………………………………………….…………
ii   Please, explain how often you attend records management conferences, workshops, and seminars? …………………………………………………….
iii Does your job description cover the management of e-records? ....
iv. If yes, have you been trained on e-records management? ………………………...

10. Contribution of records management to the transformation and attitude of staff towards sound records management practices
i   In your opinion, do the other staff appreciate the role of records in their work? ….
ii   How does records management contribute to the Judiciary transformation?............
iii To what extent does top management support records management? ……….…..
iv Please, explain how budgetary needs for records management department are met?
v   How Adequate is the budget? ....

11. Strategies used at the Milimani High Court to achieve efficiency of Justice delivery

i   To what extent are you aware of the Judiciary Transformation initiatives currently being implemented in Judiciary? ………………………………………………….

ii   In your opinion, how ready is the Judiciary in embracing Judiciary Transformation as a tool for attaining efficiency of justice delivery at Milimani High Court? Please, explain your answer……………………………………………………………….

iii   What information does the Judiciary website contain? ……………………………..

iv   From where is this information generated? …………………………………………

v   What is the relevance and timeliness of the information on the website? ………….

vi   Are complaints on issues related to records management received by the Judiciary? Please explain………………………………………………………………….

vii   In your opinion, does records management play any role in transforming the Judiciary to provide information promptly to the public? Please explain ……………………

12. Challenges faced and recommendation

i.   Please, explain the challenges that Milimani High Court faces in the provision of authentic information to the public? ………………………..............………………….

ii.   How do the challenged affect records management? ……………………..……….

iii. Please, explain what the Judiciary is doing to mitigate the challenges? ………..……

Thank you.

Appendix 2: Interview Schedule for Judges, Deputy Registrars, Human Resource Director and Executive Officers

Dear Sir/ Madam

I am a post graduate (MPhil) student at **Moi University - Nairobi Satellite Campus**, School of Information Science. I am carrying out a research as part of the requirements for the award of Master of Philosophy degree (Records and Archives Management). The title of my research is entitled "The contribution of records management to the Judiciary transformation at Milimani High Court, Nairobi, Kenya.

This will be achieved through five specific objectives, namely, to; Establish types of records maintained at the Milimani High Court; Examine the effectiveness of records management practice; Establish the available infrastructure to managing Records; Determine the contribution of records management in supporting the Judiciary transformation process; Propose strategies for improving record management to enhance the Judiciary Transformation Process.

The purpose of this communication is to kindly request you to afford me audience to interview you to collect data that would address the research problem being studied. The information you provide will be kept in confidence and used only for the current study.

Should you have questions about the research please contact me on bgmburu2007@gmail.com

Thanking you in advance for your time and cooperation.

Yours faithfully,

Beatrice Mburu

1.Background Information

i.   Designation …………………………………………………………...…
ii. Number of years in that position ……………………………………………..…
iii. Court served ………………………………………………………………….…
iv. Highest academic qualification …………………………………………………..
v.   Types of records useful in justice delivery……………………………….…......

2. Records management

i.   What causes case backlogs in the courts? ……………………..........………..
ii.   What is currently being done about the backlogs ?………………………………
iii. How has records management contributed to the case backlogs?............................
iv.   What factors lead to missing files? …………………………………...…………
v.   How is the Court currently addressing the menace of missing files? ………..…….
vi.   What is the quality of records management specified in the
vii. Judiciary Transformation Framework? …………………………………………,,…

3. Records management policies

i.   Please, explain the policies which govern records management in the Judiciary?..
ii.   Who formulates records management policy in the Kenyan Judiciary?…………..
iii. Is records management included in the strategic management plan in the
      Judiciary?.
iv.   If yes, explain the records management plans which have been identified to
      enhance availability of information?……………………………………..……….
v.   Please, explain how is records management is integrated in the Judiciary
      Transformation ?...
vi.   What guidelines are available for governing records management at the Milimani
      High Court?...
vii. What is the relationship between the Kenya National Archives and Documentation
      Service and the Judiciary?..

4. Skills and competencies among the records management staff

i.   When hiring records management staff, what skills are considered?..........................
ii.   What academic and professional qualifications are required for records
      management staff hired by the Judiciary?..
iii. Currently, what is the status of records officers in reference to their qualification
      and adequacy? …………………………………………………………………
iv.   What is the optimum required number of records management staff that the
      Judiciary should have? ………………………………………………………..
v.   How are records management staff motivated? ………..…………………………
vi.   Does the Judiciary have a training policy? Does it cover records
      management?............
vii. Are there in-service training programs for records management staff? How
      adequate are they?

5. What is the contribution of records management to the transformation and attitude of staff towards sound records management practices?

i.   Is sound records management valuable in the administration of justice? ………….
ii.   Where is records management positioned in the structure of the Judiciary? ………
iii. Is there a budget for records management functions and activities in the Judiciary?
      If yes, how adequate is the budget? …………………...…………………………

6. Strategies used in order to achieve efficiency on justice delivery

i. What kinds of data sets (computer generated data) are generated in support of prompt access of justice in the Judiciary?...

ii. How does the Judiciary engage with stakeholders and the public?.............................
   a. Through the web site……………………………………………………………
   b. Cellphone ………………………....…………………………………………
   c. Social networking platforms………………………………………………
   d. Open days …………………………………………………………………………
   e. Others ………………………………………………………………

iii. How do the citizens such as Court Users Committee contribute to the management of the Judiciary? ………………………………………………………………….

iv. Are those suggestions considered?..

v. Since the promulgation of the new Constitution in 2010 and the subsequent launch of the transformation framework in 2011, have there been other changes in the Judiciary? Please, explain…………………………………………………………

vi. What challenges does the Judiciary face as it moves towards electronic case management?...

vii. In your opinion, is there a point of convergence between records management and efficient service delivery? Please explain…………...........…………………………

Thank you.

Appendix 3: Interview Schedule for Litigants & Advocates

Dear Sir/ Madam

I am a post graduate (MPhil) student at **Moi University - Nairobi Satellite Campus**, School of Information Science. I am carrying out a research as part of the requirements for the award of Master of Philosophy degree (Records and Archives Management). The title of my research is entitled "The contribution of records management to the Judiciary transformation at Milimani High Court, Nairobi, Kenya.

This will be achieved through five specific objectives, namely, to; Establish types of records maintained at the Milimani High Court; Examine the effectiveness of records management practice; Establish the available infrastructure to managing Records; Determine the contribution of records management in supporting the Judiciary transformation process; Propose strategies for improving record management to enhance the Judiciary Transformation Process.

The purpose of this communication is to kindly request you to afford me audience to interview you to collect data that would address the research problem being studied. The information you provide will be kept in confidence and used only for the current study.

Should you have questions about the research please contact me on bgmburu2007@gmail.com

Thanking you in advance for your time and cooperation.

Yours faithfully,

Beatrice Mburu

1. Are the court files missing? **NO/YES**
   If yes, how long does it take to locate the, missing file? ....,,,,,,,,........................
2. What could be the challenge facing the records management?................…………
3. Are the staff managing records adequate? **NO/YES**
   If not what qualifications do the institution require for staff managing records?…...…………......
4. Is the storage space adequate for all the files generated in the registry? **NO/YES**
   If not then how can the court tackle the challenge so as to manage records properly?...…………………
5. Are the complaints of missing files adequately solved? **NO/YES**
    If not how can the issue be appropriately resolved?..........……………………….
6. How fast is the customer care response? **NO/YES**
   If not how can it be resolved?…………....…………………………………......
7. Is the e-filing effective? **NO/YES**
   If not how can it be improved?..
8. Is there any challenge faced during e- filing? **NO/YES**
   If yes how can it be solved?..
9. How are exhibits availed when requested during court hearing? **NO/YES**
    If not then what do you think can be done?...
10. In case of missing files are court registers easily availed? **NO/YES**
    If not whats your suggestion?..
11. Are court summons served on time? **NO/YES**
     If not what can be done to improve it?...
12. What's your take on the condition of court files?
………………………………...............……………………………….............…..
……………………………………………………………………………………………
…………………………………………………………………………………………….,,
13. Any recommendation towards records management?
………………………………………………………….................................……
………………………………………………………….................................…
………………………………………………………………………………….…
……………………………………………………………………………………….
    .

Appendix 4: Observation Checklist for the Management of Records at Milimani High Court.

1.   **Background Information**
Division ……………………………………………………………………………….
Contact ……………………………………………………………………….……
Date …………………………………………………………………………,…
2.   Records types………………………………………………………………………
3.   Record keeping practices ……………………………………………………,
4.   Are the facilities and equipment for storage adequate? ……………………,,...
5.   Tools for records control …………………………………………………………..
6.   Tools for searching and retrieving records ……………………………………,,….
7.   Records buildings ………………………………….………………………………
8.   Archives and registry layout ………………………………………………………
9.   Equipment for controlling humidity and temperature …………………………..
10.   Lighting …………………………………………………………………,
11.   Curtains and blinders …………………………………………………………
12.   Records security ……………………………………………………………,.
13.   Computers and other ICTs …………………………………………………...
14.   Automated systems ………………………………………………………………..
15.   Plans/schedules ……………………………………………………,,.
16.   Work spaces ………………………………………………………………………
17.   Filing and classification schemes …………………………………………………
18.   Physical condition ……………………………………………………………....

Appendix 5: Consent Form

Dear Respondent,

I would like to thank you most sincerely for accepting to participate in this research. This is a consent form which outlines the purpose of the research and provides a brief description of your rights as a research respondent. The purpose if study is to get your views on; **"The contribution of records management to the judiciary transformation at Milimani High Court, Nairobi, Kenya".**

You are strongly requested and encouraged to ask any question that you may have concerning this research at any time during and after this study. Your participation and views are important for the success of this study. I wish to remind you that all the information that you provide and share during this research will be kept confidential and will only be used for making the report of this survey better. Your names and personal information shared during the study will be kept strictly confidential and your names or any personal identifying information will not be included in the report.

Your participation in this study is purely voluntary and you have the right to withdraw from this study at any point and time for any reason. In the event that you withdraw from this study, any information you provided during the survey process will not be used and will still be kept confidential.

I would now like to ask you if you agree with the terms and conditions outlined and if you agree to participate in this research?

       [ ] Yes   [ ] No

Appendix 6: Research Clearance Permit

CONDITIONS

1. The License is valid for the proposed research, research site specified period.
2. Both the Licence and any rights thereunder are non-transferable.
3. Upon request of the Commission, the Licensee shall submit a progress report.
4. The Licensee shall report to the County Director of Education and County Governor in the area of research before commencement of the research.
5. Excavation, filming and collection of specimens are subject to further permissions from relevant Government agencies.
6. This Licence does not give authority to transfer research materials.
7. The Licensee shall submit two (2) hard copies and upload a soft copy of their final report.
8. The Commission reserves the right to modify the conditions of this Licence including its cancellation without prior notice.

REPUBLIC OF KENYA

NACOSTI

National Commission for Science, Technology and Innovation

RESEARCH CLEARANCE PERMIT

Serial No.A 16232

CONDITIONS: see back page

THIS IS TO CERTIFY THAT:
MS. BEATRICE GACAMBI MBURU
of MOI UNIVERSITY, 30041-100
NAIROBI, has been permitted to conduct research in *Nairobi County*

on the topic: *THE CONTRIBUTION OF RECORDS MANAGEMENT TO THE JUDICIARY TRANSFORMATION AT MILIMANI HIGH COURT, NAIROBI, KENYA.*

for the period ending:
30th October, 2018

Permit No : NACOSTI/P/17/19800/19752
Date Of Issue : 30th October, 2017
Fee Recieved : Ksh 1000

....
Applicant's Signature

....
Director General
National Commission for Science, Technology & Innovation

Appendix 7: Plagiarism Similarity Index

THE CONTRIBUTION OF RECORDS MANAGEMENT TO THE
JUDICIARY TRANSFORMATION AT MILIMANI HIGH COURT, NAIROBI, KENYA

ORIGINALITY REPORT

18%	1%	1%	1%
SIMILARIT Y INDEX	INTERNET SOURCES	PUBLICATIONS	ST UDENT PAPERS

PRIMARY SOURCES

1	Submitted to National Open University of Nigeria Internet Source	1%
2	Submitted to University of Lusaka Student Paper	1%
3	Media Publishers Internet Source	1%
4	International Journal.Publishers.org	1%
5	Journal of Information Studies.Com.org Student Paper	1%
6	Submitted to Caleb University Student Paper	1%