

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

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**Abstract**

Records are fundamental to the administration of justice and the protection of citizens' right in courts. Efficient and accountable court systems are widely recognized as a key component in the delivery of justice to citizens. In Kenyan courts, delays in administration of justice can usually be attributed to poor records management which leads to poor delivery of services to clients. The study sought to investigate why records are fundamental to the administration of justice and the protection of citizens' right in courts. The aim of the study was to investigate the role of records management in supporting the administration of justice and service delivery at Milimani Commercial Court. Qualitative and quantitative research methodologies were used for the study; interview schedules and documentary reviews were the only instrument used for data collection. Data were collected from 127 respondents who comprised judicial officers, court officers, advocates and members of the public. The findings of the study show that the role of records management in supporting administration of justice was undermined by lack of a records management policy to govern the management of court records, ineffective security measures to safeguard the records, inadequate and poor records management practices that undermined the administration of justice and service delivery, lack of the right knowledge and skills for service delivery among staff members. The study concludes that records management at Milimani Commercial Court has not been effective in supporting the administration of justice and service delivery. Recommendations made are a need for a records management policy framework to govern records management activities, good records management practices that will enhance administration of justice and service delivery, a security policy be put in place and having backups, staff training and development and a disaster management program for records management.

**Keywords:** Administration of justice, court records, Milimani commercial court, records management.

## **1. Introduction**

The International Standards on Records Management ISO 15489-1 (2001) defines a record as information created, received and maintained as evidence and information by an organization or individual in pursuance of legal or in the transaction of business.

Records are fundamental to the administration of justice and the protection of citizens' rights. Efficient and accountable court systems are widely recognized as a key component in the delivery of justice to citizens. Delays in registering cases, locating records and filing documentation all have a direct impact on citizens and their legal rights. Thurston (2005) argues that: Dysfunctional records management undermines legal and judicial reform.

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

The judiciary of Kenya is an institution comprising of courts that interpret law and provide a forum to resolve disputes. The administration of justice is not confined to the courts only; it encompasses judicial officers, court clerks, advocates and officers of the law and others whose duties are necessary to ensure that the courts function effectively. The concern of the administration of justice is the fair, just and impartial upholding of rights, and punishment of wrongs, according to the rule of law. The success of their duties depends on accurate information and records. The availability of information for use by the judicial officers so as to hear and decide court cases depends on how records are arranged and management.

### **1.2 Problem Statement**

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

Proper records management plays a vital role in making sure that records are kept in a favourable environment and can be retrieved easily and anytime. Yet in many courts there are still delays in administration of justice which may be attributed to the poor record keeping practices. Reuben Nyakundi (Judge) stated that “missing files, inaccurate information, disappearance of key documents from court files and inexplicable delays in rendering counter services are, unfortunately, still a common feature in court registries leading to inordinate delays in the delivery of justice. There have been instances when an incomplete file is placed before a magistrate or judge and unfortunately the hearing of a matter cannot proceed without a complete file. This leads to delays, which prejudice the rights of the parties. Needless to say then, an inefficient registry is a major barrier for the delivery of justice”.

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

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

Despite the efforts made through Judiciary Transformation Framework Milimani Commercial Court runs the risk of failing to manage its records holistically and systematically. The quest for justice has been hampered by lack of a records management programme which includes policies, physical access to courts, complex and unfriendly procedures, lack of information on court processes and procedures, delays in determination of cases, and alienation from the justice system. This is evident from the vast amount of records which are not well managed.

The number of cases registered at Milimani Commercial Court increases day by day and thus the court has been faced with problems of storage, retrieval, loss and or misplacement of records. The registries are congested with lots of files thus creating a poor working environment for the staff. Files being found everywhere and heaps of unmanaged records on the floor is a clear indication that either the storage equipments are inadequate and/or unsuitable for these records. The yellowing of documents, mutilation of documents, dusty and stuffy registries clearly show that the storage conditions could be a challenge to the proper management of the records. This could have contributed to problems like lost

documents and files; inadequate storage facilities and office equipment; severe deterioration of records; unwarranted waiting times for retrieval of records; uncoordinated recordkeeping practices and poor protection of records from environmental factors. This in turn hampers administration of justice and service delivery to the public.

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

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

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

### **1.3 Aim of the Study**

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

### **1.4 Objectives**

The objectives of the study were to:

1. Examine the policy framework that governs records management practices at Milimani Commercial Court.
2. Determine the effectiveness of the security measures put in place to safeguard the records.
3. Establish the adequacy of the records management practices in supporting administration of justice and service delivery at Milimani Commercial Court.

### **1.5 Research Questions**

The study attempted to answer the following research questions;

1. How adequate is the policy framework governing records management practices at Milimani Commercial Court?
2. How effective are the security measures put in place to safeguard the records?
3. How adequate are the records management practices in supporting administration of justice and service delivery?

### **1.6 Assumptions of the Study**

The study was based on the assumptions that:

Several factors related to policy frameworks, storage, security issues, service delivery, and budgetary allocation for records management have hindered the proper management of court records and hence compromised/hindered the provision of quality service to the clients.

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

### **1.7 Significance of the Study**

It is hoped that the findings of this study will assist the courts to deliver quality services at a minimum time possible saving the clients time. Sound records management will enable the court to hear and determine cases promptly without delay due to availability of information. The comprehensive investigation will make a contribution towards ensuring there are top management support and a positive attitude towards records management by the staff. The staff as a whole will appreciate records management and endeavour to protect and manage the records professionally.

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

their service delivery since they will have a better understanding of their information needs, hence reduce backlog in the justice system.

## **2. Literature review**

### **2.1 Records life cycle**

Record life cycle is based on the premise that any record has life like any organic being once it has been created. This is thought as the lifespan or time period from creation or receipt of a record through its useful life to its final disposition. According to Xiaomi (2003) the lifecycle model uses a birth-to-death analogy to describe records as passing through a series of stages. This model identified stages in the useful life of records which provide opportunities for managers to intervene effectively (Pederson, 2000). Atherton (1985) describes the life cycle in four phases- record and file creation, record use and maintenance, record appraisal and repository management. This effectively divided the profession in two: the records management phase and the archival phases.

### **2.2 Records Continuum Theory**

As defined in the Australian standard 4390, “the records continuum is a consistent and coherent regime of management processes from the time of creation of records (and before creation, in the design of recordkeeping systems), through to the preservation and use of records as archives”. Thus, the model can be used as theoretical foundation of studies with management of both paper and electronic records and archives. Mckemmish (2002) points out that the model provides a graphical tool for framing issues about the relationship between record managers and archivists, past, present and future, and for thinking strategically about working collaboratively and building partnerships with other stakeholders.

The continuum approach rejects the time-based linear approach, in which records progress through different stages in their lifecycle; instead it posts that records can be used simultaneously for many different purposes- for instance, serving current organizational needs, being managed and preserved in an archive, and forming a resource for researchers. According to Atherton (1985), all stages of records management are interrelated, forming a continuum in which both records managers and archivists are involved, to varying degrees, in the ongoing management of recorded information. She explained how the life cycle stages that records supposedly underwent were in fact a series of recurring activities within both archives and records management. The underlying unifying or linking factor in the

continuum was the service function to the records' creators and all users. Atherton's view pointed out the dangers of separating records management and archives administration under the life cycle model.

### **2.3 Gaps Model of Service Quality**

The service quality model or the 'GAP model' developed by a group of authors Parasuraman, Zeithaml and Berry at Texas and North Carolina in 1985, highlights the main requirements for delivering high service quality. The primary goal of the model is to meet or exceed customer expectations, and strategies used to achieve that objective (whether operations, human resource, or technology-based) are ultimately anchored on the customer.

### **2.4 Relevance of the Records Continuum Model and Gaps Quality Service Model to the Study**

The Record Continuum model and Gaps quality service model are the models of choice since they emphasize an integrated and proactive approach, both of which are prerequisites to records management and service delivery.

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

### **2.5 Importance of Records**

Mnjama and Wamukoya (2004) point out that "records are valuable assets that need to be managed and protected". Records provide a reliable, legally verifiable source of evidence of decisions and actions. They document compliance or non-compliance with laws, rules and

procedures (World Bank 2000). Records play a crucial role in most human endeavors and they are essential to all our business and social interactions.

## **2.6 Role of Records Management in Supporting Administration of Justice**

According to Roper (1999) “Records are fundamental to the efficient and effective operation of the legal system of a country and perhaps are even more crucial to the administration of law than to any other function of the public sector. Not only are current records in daily use for legal reasons, but records of previous actions are also routinely retrieved and used by a range of legal agencies”. Efficient and accountable court systems are widely recognized as a key component in the delivery of justice to citizens.

The practice of law relies on information. The management of legal records needs both special consideration as well as special attention.

Lack of evidence in the form of records can lead to failure of the judicial system to bring justice to the citizens. This leads to loss of faith in the administration of justice by the citizens. In a nutshell, the daily operations of the court depends on the availability of accurate, authentic and reliable information, presented in a timely manner, hence the need to maintain an effective and efficient record keeping system for the judicial system. The same thing applies to court staff responsible for safeguarding case files. When they are able to access and retrieve records in a timely manner, the working environment becomes conducive for them. If they cannot locate a case file relating to a trial it becomes impossible for a judge or magistrate to pass a judgment thus justice being denied or delayed to the person who lodged the case (the plaintiff).

## **2.7 Goals to Strengthening the Administration of Justice through Records Management**

Milimani Commercial Court is committed to improving the administration of justice through proper records management. The goals to achieving these are:

- Improving public access, transparency and accountability
- Records management staff: quality and quantity
- Service delivery.

## **3. Methodology and data collections tools**

For the purpose of collecting data for this study qualitative and quantitative research methodology was employed. In this study interview and documentary reviews approaches

were used. There are four sets of interview schedules designed to collect data needed to answer the research questions. One of the sets is for clerks and registry staff who create and manage the court records. Questions regarding availability of records management policy, types and formats of records created, security measures, retrieval tools, preservation of records and challenges encountered are asked. The other sets are for Judges and Magistrates who create and use these records, Executive officers, the public and advocates. Questions relating to the types and formats of judicial records created/received, storage facilities used, availability of the records, staffing, security measures and challenges encountered in managing the court records were asked.

#### **4. Population**

The study population included Judicial Officers- Judges and Magistrates who use records for hearing cases and making rulings and judgments, Advocates, Court Clerks and members of the public- who file cases and use the records on a daily basis, the court staff who included the Executive officers and finally the registry staff who manage these records. The target population in this study was 190 respondents comprising 8 Judges, 12 Magistrates, 39 Advocates, 10 Executive officers, 39 Registry staff, 12 Court clerks, 70 Litigants or members of the public.

##### **4.1 Sampling Frame**

<b>Participants</b>	<b>Target population</b>	<b>Sample size</b>
Judges	8	4
Magistrates	12	7
Advocates	39	26
Executive officers	10	7
Registry staff	39	26
Court clerks	12	7
Litigant or Members of the Public	70	50
<b>Total</b>	<b>190</b>	<b>127</b>

## **4.2 Sampling**

The sample population involved participants in the study from whom the data on the problem of the study was collected. It comprised 127 respondents from Milimani Commercial Court, notably, 4 Judges, 7 Magistrates, 26 Advocates, 7 Executive Officers, 26 Registry Staff, 7 Court Clerks and 50 Litigants or Members of the Public.

## **4.3 Limitation**

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

## **5. Data analysis**

### **5.1 Records Management Policy Governing the Management of Court Records**

The data collected from the majority indicated that there was no records management policy to govern the management of court records. They felt that due to the lack of policy they experienced frustrations in management of court records, in retrieval of records, missing files, inconsistent storage arrangements for files, misfiling of records, lack of standard practices in different registries with almost every staff having his/her own way of managing the files in their custody. This infers that maybe there is a records management policy but it is not documented or there is no evidence of the policy to facilitate the administration of justice and service delivery at Milimani Commercial Court. The policy needs to be put in place and the staff needs to be sensitized in-order to achieve good records management practices.

### **5.2 Security measures put in place to safeguard records.**

From the data collected there is an indication that there are security measures put in place to protect the records. The respondents indicated the use of file movement book registers and locking of the registry when not in use as the major security measures in place. The other measures cited are no unauthorized access, retrieval of files being done by

specified persons, use of strong rooms for sensitive files, use of CCTV cameras in the registries as a security measure. The findings indicate that the court had adopted various security measures to protect the records from unauthorized access and theft.

The respondents also stated that records are not sufficiently protected and that they need to be protected from improper access, accidental loss, theft, damage or unwanted destruction. Even though there are fire extinguishers in the registries, the study established that the officers are not trained in using them. The court also does not have file back-ups to secure their records.

### **5.3 Records management practices in supporting administration of justice and service delivery.**

Majority of the respondents indicated that the court records were presented to judicial officers in time while few of the respondents felt that the court records were not presented to judicial officers in time they attested this to the delays in finalization of cases.

These findings mean that the staff applied good records management practices in supporting administration of justice and service delivery at Milimani Commercial Court. This is reflected by the timely presentation of records to the judicial officers. The court has no operational case management system in place.

### **5.4 Conclusion and Recommendations**

The finding of the study has discussed a number of challenges hindering the proper management of records to aid in administration of justice. The experience generated from the study indicate that there is lack of a records management policy, lack of well trained staff to manage the records, poor preservation, lack of a security policy for records and ineffectiveness of the case management system.

#### **Recommendations**

- Develop a Policy Framework to Govern Records Management practices
- Staff Training and Development
- Automation of Court Records
- Develop a Disaster Management for Records Management
- Records Storage Equipment
- Security Policy
- Records Back-ups
- Microfilming

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