The Role of Electronic Records Management in Promoting the Delivery of Justice in Tanzania: Perspectives from Dar es Salaam Commercial Court.

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Abstract

This article discusses the role of electronic records management in promoting the delivery of justice in Tanzania. It addresses the existing relationships between electronic records management and delivery of justice. Data were collected through semi-structured interview and supplemented by docomentary review methods. A sample of 55 respondents was randomly and purposively selected. The findings noted that there was a positive relationships between electronic records management and delivery of justice in the court. Moreover, it was revealed that electronic records management promoted fast retrieval of court records, enhanced fast and informed decision making, reduced unnecessary delays, among others. However, the findings further revealed that, the absence of effective electronic records management infrastructures affected the delivery of justice in the commercial court. The article also establishes that inadequacy storage facilities, staffing levels hindered delivery of justice in the court. The article recommends that the Dar es Salaam Commercial Court should urgently develop and implement a records management policy, seek top management support at the highest level possible, build the capacity of the records staff, and launch a records management sensitisation programme for the entire court staff.

Keywords: Electronic records, records management, delivery of justice, commercial court.

1.   Introduction

This study mainly focused on how electronic records management promotes the delivery of justice in Dar es Salaam Commercial Court, Tanzania. Like in many other courts in developing countries and the world at large, delivery of justice in the courts seems to be a problem due to number of factors such as misfiling, lack of timely evidence in form of records, lack of enough budget allocation and poor government support (Mkandya, 2011). Wamukoya and Mutula (2005) observed that lack of knowledge about electronic records management is the major obstacle in delivering services in most of Sub –Saharan African countries.

Therefore, records should always be available, protected and managed effectively so as to ensure effective delivery of justice in the courts. This is true because records by their very nature provide proof of the activities of organisations or persons within a society. Records enforce and support the agency's laws or binding rules. They 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 (IRMT, 1999).

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

According to World Bank (2000), records provide a reliable, legally verifiable source of evidence of decisions and actions. They document compliance or non-compliance with laws, rules and procedures. Duranti (1998) agrees that records play a crucial role in most human endeavours and they are essential to all our business and social interactions.

Currently, there is explosion of sophisticated information and communication technologies (ICTs) globally which has resulted in the migration of government activities to an online environment where services like court, health, education, water are provided. Mambi (2010) supports this by stating that in this era of information society one can observe that most societies function within a physical and electronic medium. He further adds that the electronic medium, similar to the physical medium, creates many opportunities for the commission of crimes, such as hacking, phishing, identity theft, online child pornography, cyber stalking, creating viruses, unsolicited emails, and distributed denial of service attacks among many others. These crimes may result to the generation of huge volume of electronic records in the court especially if the parties in the proceedings wish to rely on information generated, distributed or stored on electronic devices such as spreadsheets, emails, text messages, databases and traffic data. These records should effectively and efficiently managed.

This paper is structured as follows: After the introduction is the conceptual framework section where it focus on the role of electronic records management and delivery of justice. Followed by the section, that explains the methodology of the study. The subsequent sections, it dedicated to the discussion of

findings.Eventually, the paper conclude by offering some recommendations.

2 Contextual Overview of Electronic Records Management and Delivery of Justice

2.1 Definition of electronic records

An electronic record "is a record that can be manipulated, transmitted or processed by a computer (IRMT, 1999). It is written on magnetic or optical medium (including magnetic tapes, cassettes, CD-ROMs, hard disks and diskettes), recorded in binary code, accessed using computer software and hardware, and easily manipulated (i,e, updated, deleted and so on) (Ibd). Tafor (2003) defines electronic records as that records that are dependable on relevant machines for access or reading, that is computer hardware and software such as e-mails, database and word processing. McDonald (2006) observed that an electronic records is an intangible soft record created, managed, shared and preserved through the usage of an ICT system.For the purpose of this paper, Tafor (2003) definion of the term e-records suits the study because it reflects the reality of the commercial court and other government agencies where most of its activities today depends on the availability of machines (Information and Communication Technology).

2.2 Justice Delivery

Justice is defined by the relationship that exists between an individual and the state. Justice therefore, refers to how the rights of every person are protected and how disputes are resolved. Rawls (1971) defines justice as the sense of fairness meaning that no one is advantaged or disadvantaged than the other. Rawls further demands that each person is to have an equal right to the most extensive basic liberty compatible with similar liberty for others. However, justice cannot assure that every dispute comes out "correctly" or that no mistakes are made but it should be such as to assure that the process by which decisions are made and goods allocated is fair and produces an acceptable result in the aggregate in an individual case (Ibd).

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

2.3 The Management of Electronic Records

The literature has observed that computerization has led to rapid and dynamic changes in the way governments operate, generate and manage records. The study by IRMT (2006) confirmed this view as they observed that many governments operations that traditionally depended on information derived from paper records have become partially or wholly automated. The records managers today encounter a wider range of records (paper based and electronic), than they ever dealt with before. Most records today are not created on paper. This revolution necessitates the governments and other bodies to find appropriate ways of managing the increasing volume of records electronically.

In managing electronic records, the government institutions and other bodies need to be aware of the strategies and RM systems invested so that they maintain the authenticity of content, structure and context of a record. Electronic records need to be managed well as part of the transition to the electronic environment, since failure to do this could have far reaching implications, such as loss of records leading to serious business, legal and financial consequences. It may also lead to loss of content and context of such records and thus making it meaningless and un-trusted. information Cain and Millar (2004).

However, managing electronic records has been a challenge to most developing countries especially countries in Eastern and Southern Africa Regional Branch of the International Council on Archives (ESARBICA). The literature is of full of evidence that the region is well aware of the need to manage electronic records but has only dealt with the issue theoretically and done little practically (Mutiti, 2003). The literature further posit that though, the infrastructure is available, they have not been used nor are they being used to support the design and implementation of electronic record keeping specifications. This shows a very serious need to ensure effective management of electronic records for better and fast delivery of justice.

2.4 Role of Electronic Records Management in Promoting the Delivery of Justice

In judicial administration, records serve as the backbone in the delivery of justice - accurate records provide complete information that helps the judges confer impartial decision making in court cases. Given the high volume of court cases filed every day, electronic records management play a very important role in ensuring that complete information is available to jurists to make decisions, avoid corruption, speed up case disposal and most importantly the protection of legal rights of individuals and society at large (Saman and Haider, 2011).

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. Therefore, a reliable and accurate case file system is fundamental to the effectiveness of day-to-day court operations and fairness of judicial decisions. Thurston (1999) states that; dysfunctional records management undermines legal and judicial reform. Decisions are made without full information about cases, and the absence of systematic recordkeeping and controls leaves scope for corruption or collusion between court officials and lawyers. Court time is wasted, delays are created, and the judiciary's standing is lowered.

2.5 Problem statement

The mission of Dar es Salaam Commercial Court is to provide justice, quality, effective, efficient and speedy disposal of commercial cases, using modern Management Information System (URT, 2011). In achieving this mission, the court has been striving to create a conducive environment for efficient and effective delivery of justice through the introduction of ICTs and electronic records management. Electronic records management has been considered an appropriate measure to minimize case backlog and increase the speed of handling all cases under its jurisdiction in time.

Despite these efforts, report revealed that the court has not met the expectations of most citizens in Tanzania (URT,2011). The use of ICT has led to the generation of electronic records that are potentially more vulnerable than paper records. Specifically, there are frequent reports of unnecessary delays, loss of data and failure to guarantee satisfactory access to required information (Ibd). Moreover, IRMT report (2011) noted that Dar es Salaam Commercial Court experienced poor electronic records management practices, because electronic records management system had been introduced in the Commercial Court without the necessary preparations required for the management of electronic records.

Moreover, the infrastructures such as computers required for the management of electronic court records were inadequate and therefore, endagered records to factors of deterioration. The situation was further compounded by a shortage of skilled records management staff with knowledge of electronic records management. This situation was likely to undermine the processes of justice delivery in the court.

The above concerns provided the impetus for this research to assess the role of electronic records management in promoting the delivery of justice at Dar es Salaam Commercial Court.

2.6 Aim of the study

This paper aimed at assessing the role of electronic records management in promoting the delivery of Justice at Dar es Salaam Commercial Court.

2.7 Study objectives

The specific objectives of the study were to:
1. Understand the functions performed by Dar es Salaam Commercial Court and the types of records generated by the court.
2. Determine the adequacy of existing electronic records management infrastructure at Dar es Salaam Commercial Court.
3. Establish how electronic records management promoted the delivery of justice in Dar es Salaam Commercial Court.

3   METHODOLOGY

This study adopted a case study approach aimed at collecting data pertaining to electronic records management and their role upon delivery of justice in the courts. The case study approach helped the researcher to shed light on phenomenon by studying in depth a single case. Furthermore, it provided a real-life situations and enabled exploration of the lived experience of respondents in relation to the management of electronic records in the commercial court.

Qualitative technique were employed in data collection using semi-structured interview and supplemented by documentary review. The study of 55 respondents was employed from a population of 110. The study respondents comprised of: 3 Judges, 3 Court Registrars, 3 Deputy Registrars, 1 Human Resource Officer, 2 Accountants, 12 Records management staff, 3 Information Technology staff, 8 Advocates and 20 court litigants.

The selection of sample size for this study was based on Gay's guidelines (1996) which demands that for the population from 101 up to 500 units, 50% of the total population should be sampled. The target population to be sampled was 110 that according to Gay's 55 respondents equivalent to 50% of the population were selected as a study sample size.

4   Findings and discussion

The study findings revealed the collection a response rate of 100%. This positive response was possible because

of the small number of the sample population selected, which provided adequate, relevance and detailed data about the study. Further, the time provided for data collection was enough for the researcher to reach all respondents required for this study. Furthermore, the researcher employed documentary review method in data collection where the following court documents were reviewed: The High Court-Commercial Procedure Rules NO. 250 of 2012 that stipulates powers and functions of some judicial staff like judges, registrar and deputy registrar of the commercial court; The 4th Round Table Discussion Report of 2011 which discussed the review of the draft rules of procedures of the High Court of Tanzania Commercial Division; and the 5th Round Table Discussion Report of 2012 titled *"Curbing Delays in Commercial Dispute Resolution; Arbitration as a Mechanism to Speed up Delivery of Justice".*

4.1 Functions Performed by Dar es salaam Commercial Court and Types of Records Generated
The study sought to establish the court functions and types of records generated by the court as they would help to establish the link between court functions, records management and delivery of justice. The study findings revealed that Dar es Salaam Commercial Court core functions were to interpret laws, assess the evidence presented, control how hearings and trials unfold in their courtrooms, hearing of commercial disputes, assessing the credibility and arguments of the parties and making impartial decisions on matters at hand based on interpretation of the law. Despite these core functions the court were supported by other activities performed by different cadres. These functions included: provide procedural advice to clients and staff, conduct mediation and ensuring effective management of civil and criminal registry services.

The findings revealed that (27) out of 55 respondents (49.1%) interviewed were perfoming activities which were directed towards the commercial courts' core functions. These activities led to the generation of records both in paper and electronic formats. The records generated included: annual Case Status Reports, quarterly Case Status Reports, court conference records, trial and appellate court memoranda, notes, orders; etters; decrees (summary of judgments); drawn order (summary of application of cases); returns (Notice of issue) and minutes. Other records include: employee performance appraisal reports; leave records and letters of promotion/demotion/redeployment/transfer.

These findings revealed that there is a clear link between the various functions undertaken by the various cadres in the court and the court records generated and/or received and the delivery of justice. These findings is a reflection of views shared by Mnjama and Wamukoya (2007) who point out that "records are valuable assets that need to be managed and protected". Besides providing essential evidence of organizational activities, transactions and decisions, records also support business functions.

4.2 The Adequacy of Existing Electronic Records Management Infrastructure at Dar es Salaam Commercial Court.
The second objective of the study was to determine the adequacy of the existing electronic records management infrastructure at Dar es Salaam Commercial Court. From this objective, the researcher sought to establish various aspects relating to records management infrastructure such as records management policy, availability of ICTs facilities for electronic records, records management legislation and regulation and staff knowledge and skills.

The findings from most of the respondents; 35 (63.6%) revealed that the Dar es Salaam Commercial Court had no records management policy in place that governed the management of electronic court records. While 20 (36.4%) of the respondents were not agreeable on whether or not there was such policy because they lacked understanding of what a records management policy is and how it could be implemented in the court. Also they had no idea if such a policy would play an important role on matters relating to electronic records management.

The researcher on the other hand sought to understand the extent to which the Dar es Salaam Commercial Court was prepared to invest on ICTs facilities for proper management of electronic records. The ICTs facilities such as computers open up the possibility that the creation, dissemination and management of electronic records may be satisfied in the court. About the ICTs facilities, most respondents 31 (56.4%) stated that there were inadequate computers and very few of them have wireless internet connection while most of them were limited to a Dial Up Networking (DUN) which was very slow e.g. computer modems. And for those computers with wireless internet connections, these were used only for internet access and sometimes for creating some documents that were not records per se.

About records management legislation, majority of the respondents doubted whether or not the commercial court was complying with government regulations for records management. This was because most of them were not even aware of the provisions of the Tanzania National Archives Act and other records legislations. On the issue of knowledge and skills the registry staff indicated that although they were involved in managing important court records required in every stage of decision making, they were not professionally trained to manage both paper and electronic records. Instead, they gained skills on the management of records through experience having been in the field for a long time. They lacked ICT skills and knowledge especially to manage emerging electronic records. Most of the respondents could not recall when they attended a seminar or training on records

management despite many years of work in the commercial court.

4.3 Role of Electronic Records Management in Promoting the Delivery of Justice in Dar es Salaam Commercial Court.

The third objective of this study was to determine the contribution of electronic records management towards delivery of justice in Dar es Salaam Commercial Court. The findings revealed a clear relationship existing between electronic records management and delivery of justice in the court. Most of respondents, 43 (78.2%) out of 55 felt that electrobic records management was a major contributing factor to the delivery of justice. Among the reasons given by the respondents in support of this arguments were that electronic records management enhanced effective justice to citizens because it ensured timely retrieval and accessibility of required information. They further stated that these records helped to reduce case delays because judges and the parties (plaintiff and defendant) were well informed about the case since evidence or proof were readily available online. The respondents further added that electronic records management enabled court staff including judges to access case records in a timely manner thus enhancing fast and informed decision making. They also stated that before the introduction of electronic records management issues in the court were worse because there were a lot of delays and pending cases.

Furthermore, the respondents stated that with the introduction of ICTs and electronic records management judges and court clerks were able to record audio evidence of the case during proceedings in the courtroom by using For The Rrcords (FTR) and therefore, saved the time of writing the case details manually. The use of FTR enabled provision of timely judgement because it helped judges to focus and observe the proceedings better than concentrating on writing.

However, the judges advised that these records should be well protected because poor management would negatively affect delivery of justice. The point was that, if electronic records management systems were not made to restrict unauthorized people to access information, then chances of that information leaking and being used for wrong purposes would be high and that could work to the court's disadvantage.

5   Conclusion

The mission of the Dar es Salaam Commercial Court is to provide timely, quality and accessible justice to all citizens through introduction of ICTs to facilitate fast access and retrieval of information. Despite such a mission the court was not effectively utilizing the information technology to ensure the smooth and effective management of electronic records. The infrastructures and systems used for electronic records in the court was not fully effective for records management purposes. The court lacked enough modern electronic records management infrastructure such as computers, skilled and trained records personnel, records management policies, among others. Therefore, this calls for an effective electronic records management programme that ensures efficient and effective management of court records. Effective electronic records management ensures that there is reliable, accurate and timely information required for delivering justice in the court of law. information hence supporting effective delivery of justice.

5.1 Recommendations

The researcher recommends that there is need for the commercial court to launch an electronic records management training programme for its staff. This will help equip registry staff the with the requisite skills in order to have a firm grasp of electronic records management.

The entire Dar es Salaam Commercial Court should also be equipped with electronic records management and ICTs training facilities in order to ensure successful training. Further, the commercial court should come up with a records management policy that will ensure sound management of the records, promote access to records, and enhance security and electronic records storage, among others.

The top court officials support is also crucial for successful implementation of the policy. Furthermore, the study recommends that the commercial court should organise awareness raising workshops and seminars in order to sensitize commercial court staff on the important role of electronic records management.

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