

THE JUDICIARY OF TANZANIA
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CONFERENCE

SUSTAINING THE INDEPENDENCE
OF THE JUDICIARY

COMPUTERIZATION OF THE JUDICIARY:
ADVANTAGES AND DISADVANTAGES

By

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1. INTRODUCTION

I am very grateful to the organizers of this Conference for having invited me to present a paper at this august Conference of My Lords Chief Justices of our Region. I have been asked to talk on "Advantages and Disadvantages of Computerization of the Judiciary". Though this topic is very dear to my heart, I cannot pretend to be an expert. However, I type my own judgments including this presentation.

One fact is beyond all reasonable doubt: Times have changed. More and more of us judicial officers are caught in the web of the information and communication technologies (ICT). We cannot escape that reality given the proliferation of this technology in our daily lives from mobile cellular phones to Automated Teller Machines (ATMs) and even the wrist watch.

The ICT revolution is sweeping across the world and computers have now become a handy technological tool for solving many of the traditional woes of the judiciaries from case management to delays in the delivery of judgments. A Canadian social philosopher, Marshall McLuhan, once remarked that: "*We shape our tools, and thereafter our tools shape us.*" Indeed computers now shape our lives in many respects and we in the judiciary cannot just sit around and let this technology pass under our feet. We must be able to harness it and utilise it fully to address our traditional problems.

In this paper I talk about the use of computers in courts in Tanzania and how they have helped in knowledge management, the justice delivery system by helping judges and the administrative staff. The Paper is based on experiences gained in the courts in Dar es Salaam, where computer applications in court work are the most advanced in the country. Some of the issues I have discussed may not be relevant to other countries but experiences gained and practices adopted may be instructive and may assist in

appreciating what can be done and this, in turn, may generate further ideas or invite modified applications to the use of computers in courts.

2. THE TANZANIAN LEGAL SYSTEM: SOME BASIC PROBLEMS

When we talk about the Judiciary of Tanzania we have always to remember that it is only the Court of Appeal which is for the whole of the United Republic. Otherwise Zanzibar has its own High Court and the so called the High Court of Tanzania is only for the Mainland Tanzania without any jurisdiction over Zanzibar. Here I shall talk about Tanzania Mainland which has a High Court with 13 Zones and three Divisions, 22 Resident Magistrates Courts, 88 District Courts and 1105 Primary Courts spread all over the country.

Compared with other countries like India, Singapore, Malaysia and Philippines, the Tanzania judiciary cannot claim to be a leader in the computerization of court work, nevertheless, we have already embarked on a course, albeit, slowly but steadily of introducing computers in judicial work, the experience and lessons which I am happy to share with you in this Conference.

The introduction of computers and associated applications in the Tanzania Judiciary is in initial stages but with the aid of the Investment Climate Facility for Africa (ICF) has managed to train about 40 judges, 33 Registrars and 22 Court officials in computer knowledge and skills. However, the initiative is at the upper levels of the judicial hierarchy leaving subordinate courts with limited and/or no access to computers. Efforts are underway through the World Bank funded Legal Sector Reform Programme and the World Bank and Development partners sponsored Business Environment Strengthening in Tanzania Programme (BEST) to train magistrates and

court officials and introduce digital court recording on a Pilot Scheme in selected subordinate courts.

Previously, the process of computerization of the judiciary in Tanzania had been rather sporadic and without any systemic micro-level support. Realizing this shortcoming, the leadership of the Judiciary in September 2007 convened a Conference in Arusha Tanzania on the "*Role of ICT in the Administration of Commercial Justice*," which recommended, among other things, that a Consultant be hired to develop an ICT Roadmap for the Judiciary. **The Road Map delineates three clearly defined phases for computerization. WHAT R THEY?** The Judiciary has already adopted the ICT Roadmap and is now implementing it.

The basic problems in the Tanzania legal system were pin-pointed by members of the Legal Task Force which was charged with the review of the country's legal system. In its Report to the Government in 1996, the Task Force identified, among others, the following four hitches in the functioning of the Judiciary:-

- 1) Undue delays in the disposal of cases and lack of sensitivity (accountability) to the mounting arrears of cases.
- 2) Outdated laws (both substantive and procedural) which render administration of justice difficult.
- 3) Poor management of resources and ineffective standards of judicial administration including legal aid.
- 4) Absence of strategic action plans for clearance of case arrears in courts.

The first of the three problems can be easily addressed through the use of ICT¹ mainly involving the use of computers in various aspects of the justice delivery system.

¹ Information and Communications Technologies (ICT) is an umbrella/generic term that includes any communication device or application such as radio, television, cellular phones, computer and network hardware & software, satellite systems etc. as well as various services and applications associated with them, such as videoconferencing and distance learning.

Computerization of courts, however, by its very nature, is a dynamic process of an indefinite duration because of two main reasons:-

- (i) Software development is a time-consuming and tedious process involving its preparation, testing and final application. Even then, changes are required to be made in the programme as a result of shifting requirements and other exigencies. Various versions of Microsoft Windows testify to this.
- (ii) New ideas for utilizing computers, some of them based on technological advances, are generated from time to time. Fresh ideas are often generated through inputs received from different sources.

3. THE USE OF COMPUTERS IN COURTS

a. An Overview

Three factors motivate decision-makers to improve and promote the adoption of ICT in government services, which are equally applicable to the judicial sector. First, ICT promises enormous benefits as part of the solution to economic and social problems. Second, governments in developing countries face the threat of being left further behind if they do not address the growing "*digital divide*" both between and within countries. Third, international leaders, foreign donors, and lending agencies are integrating ICT into development and aid programs.

ICT is a key weapon in the war against world poverty for which Tanzania, as is the case for many developing countries, has come up with a strategy to reduce it. When used properly, ICT offers a tremendous potential to empower people in developing countries to overcome development obstacles; to address the most important social problems they face; and to strengthen communities, democratic institutions, a free press, and local economies. Yet a wealth of evidence suggests that a significant dimension of the "*digital divide*" is the gulf that exists between potential and actual levels of ICT use in developing countries.

b. Efforts at Computerization of the Judiciary in Tanzania

The Judiciary of Tanzania has currently embarked on modernization by computerization through Projects funded by the ICF, the Legal Sector Reform Programme, and the BEST Programme. Phase I of the Project with the ICT has just been completed and has provided the Judiciary of Tanzania with modern ICT in the form of equipment (computers and court digital recording) and appropriate training in computer knowledge and skills for judges and support staff. The Project indeed has assisted the courts in the pilot areas to increase speed and efficiency in delivery of court services thus increasing people's confidence in the judicial system and that of investors who now view Tanzania as a country of destination with the assurance of solving contractual disputes expeditiously and efficiently.

c. Lessons Learnt

In the process of computerization we have learnt some lessons which can be referred to as challenges. I will not categorize them as disadvantages but they are certainly factors to reckon with. These include:

i) Sparing of Officials for Training:

Training is absolutely essential for computerization yet courts are under staffed and to spare judicial officers and other administrative staff for training is an acute a problem as their absence from work hampers the court functioning. The training aspect will cause delays in the implementation process.

ii) Choice of hardware

The best practice is to have a single type of hardware in order to minimize maintenance costs. For example, either all computers are to be the HP model or DELL. This is difficult as sometimes computers are donations from various sources and beggars cannot be choosers.

iii) *Installation of hardware*

Hardware are installed in the courtrooms and other relevant court but during court hours. In addition vendors may not be in a position to provide more manpower for installation of computer hardware especially in the remote parts of the country given the size of the country.

iv) *Change of Mindset*

One of the key barriers to computerization is the bureaucratic culture and negative attitude among some judicial officers that is averse to risk and unwilling to change. Thus, for computerization to become successful, it must have the full support not only of the judiciary but also of the public service. This requires creating an environment and an incentive structure where the civil service will support implementation of computerization rather than oppose it. Towards this end, the training of change agents in advanced computer knowledge and skills is highly critical.

Top leadership must be competent in using the ICT. Technology alone will not make computerization of the judiciary happen because technology will be no match to a hostile bureaucracy. People, not technology, are critical.

v) *Availability of adequate resources*

Computerization of courts leads to cost reductions in the administration of justice but it requires money to implement, particularly in their initial stages. Outsourcing can minimize costs but the Government has to set aside a budget for funding these projects.

vi) Phased approach

Because change is difficult to implement and government resources are limited, it is important that computerization initiatives start with pilot courts. The courts to be prioritized should be those that: a) have the highest caseload and therefore critical in improving delivery of court services; and b) help promote and attract commerce and investments. It is also important that the courts prioritized for implementation of computerization be able to demonstrate quickly the benefits of ICT in terms of reducing cost, enhancing delivery of service and improving transparency. Thus, it is important that clear targets are set and deadlines for implementation of computerization are religiously adhered to.

vii) Public awareness of available computerized services

Raising popular awareness of existing computerization projects in the Judiciary would increase the public's use of these new services and, hence increase demand for them and other similar services. Promoting existing computerization projects would also serve as a public recognition of the good work done by the courts.

4. ADVANTAGES/DISADVANTAGES OF COMPUTERIZED RECORDS

a. Advantages

The Judiciary of Tanzania, as is the case for many courts in Sub-Sahara Africa, depends on archaic, handwritten recording, information and filing systems. This means that disputes, particularly commercial, take years to resolve thereby frustrating litigants and wastage of time and resources. While many efforts have been initiated to make judicial services more user-friendly, more effective and efficient, many of these initiatives have been less than successful.

The use of ICT is the key element in the positive improvement of the administration of Justice. Use of ICT assists the Judiciary to manage and reduce backlog of cases,

improve economy, enhancing transparency, efficiency and effectiveness and the more general objective of promoting confidence in the justice system. The rapid development of technology opens up new opportunities that were unthinkable only a few years ago. ICT can be used to enhance efficiency, access, timeliness, transparency and accountability, helping the judiciaries to provide adequate services. In addition, the use of internet can offer a chance to open the Tanzanian judiciary to the public, providing both general and specific information on its activities, thereby also increasing legitimacy. ICT supports the work of the Judges in several areas, including the organization of the activities, the information management and trial, document production and the decision making. One of the aspects of the Judges' activities which have been improved by the use of ICT is that of Legal Research.

With the advent of computer technology, the judiciary, like most other public services providers, has seen an increasing role in the use of computers in connection with the delivery of judicial services. In some instances, it is the use of certain technologies to store paper documents in an electronic format. It is a movement towards the use of the electronic court record, or ECR. The ECR is designed to replace the paper record as the primary record of services. Unlike paper records, an ECR is designed not only to record the court service being provided, but also to provide a way for that information to be interactive. For example, it can include reminders about court appearances. Essentially, it can provide a lifetime record of a case, a record that can be added to, and accessed by, multiple sources. Regardless to the degree, if any, that a provider or a facility uses computer technology, it will enjoy a number of advantages over its paper-only counterparts. That same provider or facility, however, will also magnify some problems and see ones that are unique in the context of computerization of records.

Other advantages are: Immediate access to entire court case history, thereby increasing continuity of service and efficiency – a "cradle to grave" approach to

documenting a court case history and management. Identification of the stage of the case management plan for each individual court case. Prevention of abuse of the judicial process by making it easy to track filing of cases in different courts across the country. Increased efficiency in billing and collection of various court fees thereby increasing collection rates per case and decreasing costs. Lowering judicial service costs by streamlining the administrative and paperwork burdens of court service provision. Eliminates the problem of illegible handwriting. Can provide immediate prompts with respect to case status.

5.2 Disadvantages

Disadvantages of computerization include the following: Vulnerability to invisible theft and alteration, with a greater amount of records vulnerable because of the ease of access. Violation of confidentiality and/or other privacy laws. Over monitoring by judiciary - the "Big Brother syndrome." Computer files are only as good as the information logged into them. Durability/computer virus/computer sabotage. Computer down time, inaccessibility and confusion, e.g., problems in networking. Concern that the type of information accessible is not just court case information (could include family history, previous criminal violations). Concern regarding who is responsible for maintaining the integrity and confidentiality of the records.

The overriding concern of computerization of court case records is security of data since court records often contain sensitive personal information. Conversely, a central database of information on each case is equally important. These two competing concerns must be reconciled when considering computerization of court work opportunities.

6.0 CONCLUSION

The future of teleworking justice is promising and some of the factors favouring it are that:

- i) The judiciary involves a lot of people who push paper back and forth at each other in vast amounts.
- ii) The judiciary is already a highly routine system hence it is easier to integrate into an online system.
- iii) There is already a keen interest in computerization and automation in both the judiciary and law offices.
- iv) It is politically appealing to computerize the judiciary particularly in solving delays in the delivery of justice.
- v) It is economically viable as it is cheaper than constructing storage facilities for case files and purchase file and/document cabinets.
- vi) It is multifaceted as it involves both lawyers and all the people who are not lawyers but work in law offices. Similarly, it is not only a question of the "electronic courtroom", that is, a room packed with ICT devices before the parties or parties are electronically brought into a court room. It is also a matter of "the administration of justice: "putting online all of the millions of things that law clerks do for lawyers, judges, etc., and which themselves need to be linked together more quickly and effectively, etc, what we call e-library.

I THANK YOU FOR YOUR KIND ATTENTION!