
Effect of Case Management on Access to Justice Strategy in Molo Law Courts of Nakuru County, Kenya**Evalyne Wachera Ndegwa^{1*}, Paul Gesimba¹, David Gichuhi²**¹Department of Business, St. Paul’s University, 8 Moi Ave, Nairobi, Kenya²School of Business, Karatina University, C74, Karatina, Kenya***Corresponding author***Evalyne Wachera
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Abstract: Access to justice suffers a number of challenges and results to ineffective functioning of the justice system. Despite the existence of empirical studies on strategy implementation and strategic planning in the Judiciary, no research has been carried out on the effect of case management on access to justice. The population of the study comprised one hundred and thirty five respondents being magistrates, Judicial staff, Office of the Director of Public Prosecutions (ODPP) counsels, advocates, police and prison services, children and probation officers based in Molo Law courts. The study used the descriptive research design. Stratified proportional sampling was used to categorize various stakeholders into strata and determine the number of participants that would be selected from each stratum. Simple random sampling was used to select individual respondents from each stratum. Primary data was collected by use of questionnaires, where quantitative data was analyzed using both descriptive and inferential statistics specifically Spearman correlation analysis, while qualitative data was analyzed using thematic analysis. The study targeted to collected data from 94 individual but only 72 were able to complete and return their questionnaires to the researcher. From the study findings, the values of Spearman correlation coefficient were $r = 0.735$ for case management. This implies that the way case management is handled is an important determinant of whether there will be access to justice or not.

Keywords: Case Management, Justice Strategy, Access to Justice.

INTRODUCTION

In the contemporary world, successful strategy implementation is very important. Thompson and Strickland [1] state that implementing strategic plans has been emphasized worldwide since it is perceived to contribute to organizational effectiveness. Nevertheless, transforming strategies into action is not as easy as it sounds. It is a far more complex, difficult and a challenging undertaking [2]. According to Thompson and Strickland [1], several items have to be present for a strategy to be successfully implemented. These are: the right people who must be ready to employ their unique skills and abilities, resources that include time and money, management and technology systems that help monitor the implementation, and the environment in the workplace must not only make everyone feel comfortable but also motivated. Some studies reveal that the process of strategy implementation in organizations is gradual. Locally, Munge and Kitiabi [3] while conducting a study in insurance industry, recommend that smooth implementation of strategy requires companies to avoid resistance especially by making sure that each and every employee is involved in the process as well

as ensuring that there is proper channels of communication about this strategy.

The Judiciary is a creature of the Constitution. Chapter 10 of the Constitution requires the Judiciary to exercise judicial authority drawn from the people of Kenya. The core mandate of the Judiciary is to dispense justice and promote the rule of law. In exercising judicial authority, Article 159(1) of the Constitution stipulates principles that should guide courts. Justice shall be done to all irrespective of status; justice shall not be delayed, alternative forms of dispute resolutions shall be promoted including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms, justice shall be administered without undue regard to procedural technicalities and the purpose and principles of the constitution shall be protected and promoted. The Judiciary comprises the judges of the Supreme Court (the highest court in Kenya), judges of the Court of Appeal, and judges of the High Court (Puisne judges), magistrates, and Kadhis. The Chief Justice is the head of the Judiciary. The Judiciary has its headquarters in Nairobi and has courts of different ranks in the 47 counties of the country.

Molo Law Courts is one of the courts in Nakuru County, which has benefited under the Judicial Performance Improvement Project (JPIP), which is funded and supported by the World Bank Group. JPIP was designed to strengthen the capacity of the Judiciary in providing services in a more effective, transparent and accountable manner. JPIP was conceptualized in 2012 and is being implemented for a six year period ending in 2018. The project is being implemented by the Judiciary and also supports the justice sector players such as the Office of the Attorney General and The National Council for Law Reporting – (Kenya Law) [4].

In the financial year 2016/17, there was a case backlog 315,378 cases with only 159 judges and 470 magistrates and Kadhis for a population of 46.6 million (State of the Judiciary Annual Report, 2016-2017. Magistrates' courts had the heaviest backlog as compared to the other courts having a backlog of 199,536 cases. Including the case backlog in the Magistrates' court in that financial year, 366,567 cases were pending which represented a 10% increase as compared to the previous financial year. From the Daily Court Returns Template [4], Molo Law Courts had a total number of 703 pending criminal cases as at 30th November 2016. Therefore, this study is about the effects of resource management on Access to Justice in Molo Law Courts, Nakuru County.

LITERATURE REVIEW CASE MANAGEMENT

Alam [5] defines case management as the articulated planning of the life and history of a case after submission of a written statement by the authorities, determined by an early judicial intervention for example sitting judge's order, enforcing active participation of the parties and strict observance of the schedule under the court's supervision. Bolaji [6] notes that case management coordination amongst the police, prosecution, and court is necessary for improving access to justice. A digital case system enables all parties to access files electronically. It replaces the paper file, making the case papers available online so all parties can work from the same full set of papers, providing clarity over what has and has not been served as observed by HM Crown Prosecution Service Inspectorate [7]. A case clearance rate measures the extent to which the court system is able to dispose-off cases relative to cases filed within a specified time. It is measured as the number of resolved cases expressed as a percentage of initiated cases within a specified period. A clearance rate of 100% indicates that the court is coping with workload. More than 100% indicates that the court is reducing case backlog while less than 100% means that the court is accumulating more cases [8].

The existence of the criminal justice system is to provide order that is just to all citizens of a country

regardless of race gender and titles. The criminal justice players exercise necessary moral authority hence they must work towards protecting the rights of the accused, including the right to disclosure and a fair trial, and it must resolve matters effectively. According to ISO-International Organization for Standardization [9], Record management is an important function of any organization or existing business. Good and proper record keeping is evidence of a well-governed organization and should be seen as an integral part of, rather than incidental to, any business. Faster case disposition leads to increased satisfaction among victims about the process while a swifter response to criminal activity helps reduce recidivism [16]. Farell [10] states that prosecutors should be provided with information on repealed and up-to-date statutes, as well as legal strategies on cases.

The Rape Crisis Network Ireland [11] noted that unnecessary and inordinate delay leads to injustice. The Network proposed that the remedy to the chronic and persisting unnecessary delays in the criminal courts was an integrated system of Case Management and Pre-Trial Hearings, based on statute. Such a system would be beneficial since it sieves the issues for determination and provides greater clarity and significant focus on the relevant issues in the trial. Consequently, the trial becomes shorter and more cost-effective. It also results to more effective administration of justice, and greater public confidence in the criminal justice system.

Effective case flow management in the criminal justice sector is characterized by expediting and closely monitoring the time and chronology of events involved in the movement of each case from the very first time an Accused is arraigned before court system to the disposition of his case. To achieve this goal, it is imperative to adopt a Case flow Management Plan that encompasses policies and practices that incorporate the essential concept of early and continuous supervision to the cases. Ideally, a case management information system should facilitate tracking individual case progress, provide up-to-date information on the size and age of each case and allow measurement of system performance against the standards and goals. Without timely information on the status and age of each case and the total caseload, it is extremely difficult to sustain an effective case flow management program [12]. Case flow management is not without challenges. While using a case of Zambia, Daka and Phiri [13] points out that some of the challenges of handling cases manually is that there is always lack of efficiency and poor case management where it was found out that only one person can access a file any given time.

An effective Criminal Case-flow management practice requires: a prompt arraignment of an Accused person in court, expeditious supply of witness

statements to the Accused person, to have an advocate assigned to the Accused without delay and to promptly conduct client interviews, realistic charging by prosecutors, early exchange of information between prosecution and defense. It also encompasses emphasis on early resolution of matters, screening of cases by prosecution, defense and judge during pre-trial case conferences, early, realistic disposition offers including pre-trial agreements that are unlikely to improve substantially over time and having cases assigned a future date certain for a specific purpose [12]. The number of adjournments in a trial, particularly during the pre-trial period, is often a sign of poor case management. Adjournments, particularly unnecessary ones, have been shown for a long time to be responsible for substantial delays in the criminal justice process and for creating difficult case scheduling and case management challenges. Ineffective hearings are also linked to unnecessary adjournments. Often, this stems from some of the same issues, including poor case preparation, complicated procedures, or the inability of parties to resolve various issues without the intervention of the court [14].

In order to appreciate the importance of case files in the contexts of courts, there is need to understand what court files integrity, which deals with establishing accuracy and completeness of the files in court. Accurate, complete, up-to-date, and readily available case files and records are critical for effective and efficient day-to-day operations of a court. Automation of registry records and development of a standard checklist for documentation for filing of cases standardizes management of files in the registries [8].

Indeed, case management has been observed in various parts of the world as critical in access to justice. In realization of this, courts in countries such as Malaysia introduced what is referred to as e-court alongside other innovations such as e-filing, electronic case management, queue management and code recording and code transcribing which are aimed at ensuring that the case is managed properly cases are properly managed from the beginning to the end using available technology [15]. Even as the study was conducted outside the Kenyan context, the findings highlight the need for improvement of access to justice by incorporating use of ICT to drive various processes for court cases today. This expedites hearings and determination of cases, especially if Molo law courts

are to benefit from such advanced way of dealing with court cases.

Indeed, it can be noted that management of cases is an important determinant of access to justice in the judicial circles. The various studies reviewed with regard to case management reveal two major important aspects. One of them is to ensure that cases are as much as possible not delayed unnecessarily in order to expedite the dispensation of justice to people seeking justice in the court of law. Yet another issue that comes out clear is the fact that utilization of modern-day technology can be a tool towards enhancing expeditious determination of court cases and hence improve the perception of access to justice by the public and the stakeholders in general. Therefore, borrowing from the best practices around the world, Molo law courts could perhaps borrow ideas from advanced ways of dealing with fast and prompt determination such as the ones in Malaysia where there is utilization of e-filing, case management system among other tools to help better share information and also deliver justice to the people.

From the literature, it is clear that case management is one aspect of resource management that can make or break the whole process of access to justice in any given court. Proper keeping of records as well as improved utilization of information and communications technology can go a long way in ensuring there is access to justice in courts. Proper coordination of the case especially with stakeholders such as police, and the prosecution is necessary to guarantee access to justice. One other factor that dominates literature on case management is the fact that there should be avoidance of unnecessary delays that could hamper the process of access to justice by the litigants.

RESULTS

Correlation of case management and access to justice

As summarized in table 4.4 below, it can be noted that by far case management is an aspect of resource management that had the highest effect on access to justice especially in Molo law courts. With the value of $r = 0.735$, this information is critical for the management of the Judiciary in trying to manage resources at the court with the aim of improved access to justice.

Table-4.4: Correlation of case management and access to justice

		Access_to_justice	Case_management	
Spearman's rho	Access_to_justice	Correlation Coefficient	1.000	
		Sig. (2-tailed)	.000	
		N	72	
	Case_management	Correlation Coefficient	.735**	1.000
		Sig. (2-tailed)	.000	.
		N	72	72

** . Correlation is significant at the 0.01 level (2-tailed).

The study findings with regard to case management and access to justice seemed to be in line with Bolaji [6] who maintains that case management coordination amongst the police, prosecution and court is necessary for improving access to justice. With a statistically significant relationship between case management and access to justice in Molo law courts, this position seems to be in agreement with Long [16] who holds the position that faster case disposition leads to increased satisfaction among victims about the process while a swifter response to criminal activity helps reduce recidivism.

A closer look at statements given by the respondents with regard to case management and its effect on access to justice reveals a number of issues. One of the major issues in Molo law courts as discovered from the study findings is the rampant cases of missing court files that accounted for close to 22 (30.56%) of the responses. Highlighting the need for proactive measures to be put in place to ensure securing of court files in order for the public to access justice at the court. This is in realization of the fact that there is a strong relationship existing between case management and access to justice hence more needs to be done to secure the files. This goes hand in hand with recommendations by International Organization for Standardization [9] that point out the need for proper record management as an important indicator of a well-governed organization.

Yet among the issues that emerged about case, management and access to justice include a huge backlog of cases, which apparently is brought about by the fact that most of the cases are not screened at the first instance. Lack of fairness in the administration of justice and poor record management also hinder access to justice in Molo law courts. Some respondents observed that there has been a general improvement in access to justice at the court especially by the presence of ADR. From the study findings, it can generally be observed that access to justice is strongly dependent on how cases are managed or handled and hence more needs to be done in Molo law courts to ensure that issues that may hinder access to justice are eliminated in order to deliver effective, efficient and palatable services to the public.

Case management and access to justice

The second objective of the study was to analyse the effect of case management on access to justice in Molo law courts. Cases management majorly focused on issues such as record keeping, judicial management, and efficiency in giving bails and bonds, efficiency of case resolution among others. Results of correlation analysis established Spearman correlation coefficient of $r = 0.735$ which was by far the highest for all the variables of the study.

In conclusion, the way case management is handled is an important determinant of whether there will be access to justice or not in Molo law courts. Therefore, more effort needs to be channeled towards ensuring that there is proper management of cases. Especially with keen focus in focus on the area such as setting earliest dates possible for judicial determination, proper record management of all the evidence tendered in the court of law among other steps all of which are geared towards ensuring proper case management in Molo law courts.

Procedures of case management in Molo law courts and need to improve especially in view of the fact that access to justice is dependent on how well the case is managed from the beginning. Having identified cases of missing court files as well as huge backlog of cases, is recommended that the court come up with proper mechanisms to ensure that there is proper storage and retrieval of court files in order to avoid cases of missing court files, as well as set timeline so that cases are expeditiously heard and determined.

REFERENCES

1. Thompson, A. A., Strickland, A. J., & Gamble, J. E. (2007). *Crafting and executing strategy. The quest for competitive advantage. Concepts and cases. 15th edition, New York, NY.*
2. Aaltonen, P., & Ikävalko, H. (2002). Implementing strategies successfully. *Integrated Manufacturing Systems, 13*(6), 415-418.
3. Munge, Z. N., & Kitiabi, R. (2017). Challenges of strategy implementation by insurance companies in Kenya. *International Journal of Finance and Accounting, 2*(2), 1-22.
4. *The Judiciary Transformation Framework. (JTF); 2012- 2016.*
5. Alam, M. S. (2000). A Possible way out of Backlog in our judiciary. *The Daily Star, 16.*
6. Bolaji, O. (2011). *Improving case management coordination amongst the police, prosecution and court, Nigeria.*
7. HM Crown Prosecution Service Inspectorate. (2016). *Better Case Management: A Snapshot, Publication No. CP001: 1212.*
8. Republic of Kenya. (2015). *Institutionalizing Performance Management and Measurement in the Judiciary.* Nairobi, KE: Government Publisher.
9. Kastberg, P. (2002). Information and documentation management in the training of technical translators-as opposed to teaching technical science. *LSP and professional communication (2001-2008), 2*(1).
10. Farrell, A., McDevitt, J., Pfeffer, R., Fahy, S., Owens, C., Dank, M., & Adams, W. (2012). Identifying challenges to improve the investigation and prosecution of state and local human trafficking cases.

11. Ireland, R. C. N. Reducing delays in court RCNI policy paper on case management and pre-trial hearings in the criminal courts-expanded version.
12. Solomon, M. (2010). *Conducting a Felony Caseload Management Review: A Practical Guide*. Bureau of Justice Assistance, US Department of Justice.
13. Daka, K., & Phiri, J. (2017). Law enforcement Case management System (LECMS): A case of law enforcement agencies in Zambia. *International Journal of Advanced Studies in Computers, Science and Engineering*, 6(10), 30-37.
14. Dandurand, Y. (2009). *Addressing Inefficiencies in the Criminal Justice Process: A Preliminary Review*. International Centre for Criminal Law Reform and Criminal Justice Policy, University of British Columbia.
15. Hassan, K. H., Yusoff, S. S. A., Mokhtar, M. F., & Khalid, K. A. T. (2016). The use of technology in the transformation of business dispute resolution. *European Journal of Law and Economics*, 42(2), 369-381.
16. Long, J. (2014). *Beyond Conviction Rates: Measuring Success in Sexual Assault Prosecutions, Strategies*, The Prosecutor's Newsletter on Violence against Women (12).