



ABSTRACT

The management of court records is essential to efficient and effective legal systems, and this helps to support accountability by making the judiciary more transparent. The study sought to find out the system of management for court records at Mzimuni village manned by Chief Mbiko Masuku. The problem of the study was triggered by the lack of proper court equipment to capture court proceedings as the court session was in progress. It seems Mzimuni District village court give little attention to the proper management of record processes, during the village court proceedings. The village clerk recreates session handwritten court records. It remains uncertain whether proper records management practices are being followed in the village court since court records need to be protected from manipulation. The study therefore sought to determine the types of records created at Mzimuni village court, to find out the processes and procedures involved in the management of village court records. Furthermore, the study meant to examine the regulatory framework guiding the management of village court records and also identify challenges faced in the management of such records in Mzimuni village court. The study was guided by the a qualitative research methodology was applied and a case study design was used with a population sample of fifteen (15) participants comprising of the chief, councillors, village court clerks, assessors and messengers who were purposively chosen because they had vast knowledge about the operations of a village court. Data was collected through the conduct of interviews. Interpretation of data was thematic based on the objectives of the study. The findings of study were that there are different types of records created at the Mzimuni village court such as case notes and main points. Respondents of the study showed little knowledge about the existing legislation and its application in the management of records. Findings also revealed that the records were kept at the village clerks homestead. The major challenges identified were the lack of proper court infrastructure and a records storage room and lack of funds. The researcher then concluded that with different types of records created at Mzimuni village court, there was lack of records management legislation and there was no records management policy document. The study recommended that there were that there should be

collaboration between the National Archives of Zimbabwe (NAZ) and the village court officials where archives staff frequent the village court and train them about good records management practices.

1.1 Background to the study

Court records form the basis of decision-making by courts, as they document the court's daily activities and proceedings. Court records usually arise from civil, criminal and miscellaneous cases (Mosweu and Kenosi, 2018:12). According to Motsaathebe and Mnjama (2009:174), court records include records generated specifically from legal processes, from the work of the courts, the police and public prosecutors. The court record is everything to the judicial process and is the basis for a fair trial. The court record also initiates judicial processes such as appeal, review and revision, which are significant to trial fairness (Namakula, 2016:177). As such, court records are of paramount importance in ensuring that rule of law, a fundamental governance objective, is served.

According to Thurston (2005:97), well-managed court records are essential to efficient, effective legal systems as they are means by which citizens and organizations can enforce their rights, and they support accountability by making the judiciary more transparent. 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, provide evidence or proof that a particular activity took place, and contribute to accountability in organisations and in government. The court records per se serve the following functions: they initiate proceedings, safeguards the memory of the case, acts as evidence, and often supports the legal rights and obligations of stakeholders (Motsaathebe and Mnjama 2009:19). The form and manner of creating, managing, and the disposal or destruction of the court record is subject to law (Namakula, 2016:176-181).

In Zimbabwe there are two types of courts, the Criminal and civil courts (Final draft Constitution of Zimbabwe No.20 (2013), sections 166-169). They are both divided into the Magistrates, High and Supreme courts, the Appeal Court where all the appeals can be referred, the Constitutional court where all constitutional matters are referred, and the lowest level courts are the village courts which handle petty issues of the village.

Gwanda district is in Matabeleland South province of Zimbabwe, with the population of 685,046 being the country's least populous province (Population Census, 2012:73). The

province is divided into six districts and Gwanda is the capital of the province. Mzimuni is a Ward in Gwanda district, where Mbiko Masuku is the chief of the ward. There are many village courts in the country and sometimes, a group of villages may have a single court to hear appeals. According to Nabombe (2012:5), the customary law, as the law of the majority of African people and the village courts that administer justice according to this law are part of the cultural heritage of African people.

1.2 Statement of the problem

The daily operation 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 (Motsaathebe and Mnjama, 2007:173). Several courts of law in Africa use out-dated gadgets while many others, especially at lower level rely on handwritten notes of judicial officers in circumstances where stationery may be inadequate and storage facilities are exposed to risks of fire and theft (Namakula, 2016:177). The High Court of Zimbabwe and all other legal courts of Zimbabwe are having problems with their court system because it is very slow, thereby leading to too much backlogs and records sometimes go missing (Bhebhe 2015: 108). The problem of the study was triggered by the lack of proper court equipment to capture court proceedings as the court session was in progress. It seems Mzimuni District village court appears to give little attention to the proper management of record processes, during the village court proceedings. The village clerk recreates session hand written court records. It remains uncertain whether proper records management practices are being followed in the village court since court records need to be protected from manipulation. Evidence is lost during the creation and management of the court records (Namakula, 2016:177).

1.3 Purpose of the study

The aim of study was to investigate the management of village court records in Mzimuni Ward with the intention of coming up with possible strategies to improve the management of village courts records.

1.4 Objectives of the study

The study meant to:

- a) To determine the types of records created at the Mzimuni village court.
- b) To establish the processes and procedures involved in the management of village court records.
- c) To examine the regulatory framework guiding the creation and management of village courts records at Mzimuni village court.

- d) To identify challenges faced in the management of records at Mzimuni village court
- e) To establish measures that can be adopted to ensure proper management of records in village courts.

1.5 Research questions

- a) What types of records are created at Mzimuni village court?
- b) How are court records managed at Mzimuni village court?
- c) Which regulatory framework guides the management of courts records at Mzimuni village court?
- d) What are the challenges faced in management of records at Mzimuni village court?
- e) Which measures can be adopted to ensure proper management of records in village court?

1.6 Review of related literature

1.6.1 Creation of Court Records

Namakula (2016:177) states that a 'Court record' is a broad term denoting the case file, containing all the material admitted into a case by the court and that which the court produces in that regard. This includes documentary evidence; exhibits; summons; correspondence between the parties; affidavits of service; judgments; final orders of court; and the transcript or record of proceedings. She went further to say that the record often contains pleadings; the court's findings; procedural steps taken; observations such as site visit reports; comments on the demeanour of witnesses; the evidence; and the identity of participants such as counsel, interpreters and the parties.

From the creation of a court record to its disposition, vital decisions are taken on a file which have a direct impact on the parties to a case. Moreover, (Namakula, 2016:183) maintains that the court record also initiates judicial processes such as appeal, review and revision, which are significant to trial fairness. She adds to say that an appeal, particularly, is decided on the records only. Examples of what a record should comprise of include any judgment or ruling; any evidence given in court; any objection made to such evidence; the proceedings of the court, including any matter demonstrated by any witness in court; and any other portion of the proceedings which the judge may specifically order to be recorded.

Records created in the village court are a vital asset to the district; they need to be properly recorded and need proper storage facilities for them to be preserved for a long time. According to Motsaathebe and Mnjama (2007:173) court records may simply be any

document or other material that is received or maintained by the court pertaining to or in connection with a judicial proceeding. These may include those records generated specifically from the legal processes, from the work of the courts, the police and public prosecutors.

Records created at village courts should represent the correct statement presented to the village clerk always. According to Namakula (2016:180) in Botswana, the aforementioned process is guided by the rules of the courts. There is no elaborate procedure, but the rules contain fragments of instructive guiding principles. Of note is Order 45 Rules 16-19 of the Rules of the High Court, which set out (i) the composition of the record; (ii) the means by which the record is to be kept; (iii) the circumstances under which the record may be transcribed; and (iv) the means by which a party may access the record.

According to Musembi (2005:1) poor records creation at courts of law may result in compromising the administration of justice. Maseh (2015 :45) reasons that the success or failure of nearly every court function such as case processing, statistical reporting, dispute resolution, personnel and financial management will be evidenced by the proper or improper creation of its records. The study therefore sought to find out the procedures involved in the creation of village court records.

Court Records can be paper based or electronic, in a paper-based environment, records are kept authentic by maintaining them in same form and state in which they were created or received (Duranti 1999:154, Yusof and Chell 2002:58-61). However, paper-based materials can deteriorate chemically and physical, some deteriorate because of their properties, others as a result of poor storage or displayed conditions. Damage can be caused by poor handling practices, the media on paper-based objects such as ink, water colour or pencil can also degrade while deterioration cannot be stopped there is need to influence the rate at which it happens concurred(Atherton, 2005:40). Namakula (2016:184) points out that in Uganda predominantly operate a paper-based manual court record management system.

1.6.2 Management of court records

The central aims of records management processes are to preserve the authenticity and reliability of records (Reed, 2005 cited in Kilgour, 2013). As such, records management systems, whether paper or electronic, are structured with a central focus on these characteristics. For example, clause 9 of the ISO 15489-1 (2001), notes that records management systems should follow certain steps to ensure proper maintenance of the record. Specifically, this clause explains that capture, retention, registration, classification, storage and handling, access and use, tracking, and disposition should be part of a records

management system's processes (Kilgour, 2013). The study therefore aims to examine the creation, storage and handling, access and use including the disposal of village court records.

The importance of court records cannot be overemphasized as Roper and Millar (1999) also argue that court records are among the most important and valuable public records of any country. Studies done by Lowry (2013), Schlanger and Lieberman (2006), Roper and Millar (1999), Peterson (2006) and Chadwick (2018) showed that there is need for the proper management of court records. Furthermore, it is crucial for any organisation to ensure that their records are managed in accordance with established guidelines, principles and internationally recognised standards (Mosweu and Kenosi, 2018).

Moloi and Mutula (2007:291) posit that the effectiveness of any records management system can be deduced from the systematic control of the creation, receipt, maintenance, use and disposition of records including the process for capturing and maintaining evidence of information about business activities and transactions in the form of records. They also point out that sound records management collectively enhances transparency, accountability and good governance. According to the International Records Management Standard, ISO 15489-1 (International Organisation for Standardization; ISO (2016), the standardisation of records management policies and procedures ensures that appropriate attention and protection are given to all records, and that the evidence and information they contain can be retrieved more efficiently and effectively by using standard practices and procedure (Mosweu and Kenosi, 2018). In addition Griffin and Roper (1999:70) propose that in order to improve case file tracking systems in institutions basic records tracking tools such as file location cards, file movement sheets, file transfer slips, and records census forms should be used.

Records management incorporates the policies, systems and professional and management techniques systematically applied to the control of recorded information to enhance an organization's efficiency and effectiveness while at the same time consolidating its evidential base (Wamukoya, 2007:7) In support of study (Maseh 2015:89) opine that the court record is a valuable asset that is vital to the dispensing of justice. The significance of the record to the integrity of the judicial process makes the capacity of courts to facilitate the record a core component of court competence. The process of generating the court record is therefore worth noting.

Thurston (2005:2) argues that dysfunctional records management undermines legal and judiciary reform. For example, 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. Secondly, effective records management are essential because of the large volume of records passing through a typical court system, records sensitivity and time pressures on courts.

Detailing the procedures involving authenticating court records, Bhebe (2015:109) stated that civil records from the High Court of Zimbabwe are always dated and sometimes stamped by respective offices; correspondence between lawyers and the High Court of Zimbabwe is usually addressed to the Registrar General and signed. Divorce decrees are dated, and the presiding judge mentioned, including the plaintiff and defendant, and on top, the case number is written on the right-hand corner of the document. The study therefore sought to establish the processes and procedures involved in the management of village court records.

1.6.3 Storage of court records

It is important for courts to properly maintain their records for referrals or evidence when needed. In Ghana and Tanzania, laws have been improved as closed files have been transferred to low-cost storage or destroyed, and filing systems have been restructured to support modern administrative functions (Thurston, 2005:97). In Zimbabwe, the courts of law also observe the importance of the storage of records in their original order and this is supported by Bhebe (2015:1) as he stated that civil and deceased estate files of the High Court of Zimbabwe find their permanent home at the National Archives of Zimbabwe (NAZ). He went on to say that it, therefore, becomes of paramount importance that the integrity of these records is maintained because if otherwise, the implications can be far reaching. Protection from tampering and falsifying these records should be enforced at all times, and the system should be able to detect any deliberate and unintentional tampering with records.

More so, Thomas et al., (2003:162) suggests that the outcome from establishing record centres in institutions includes effective storage and retrieval systems and comprehensive records transfer and storage programmes. They further suggested that in order to prevent the loss of records in case of a disaster, institutions should identify those records which were considered vital in the access to justice process and such records should be digitised, produced in multiple copies and kept in secure facilities within the institution or entrusted to trusted off site facilities.

All these records management processes from the capture, use, storage and disposal of court records are crucial in the creation of essential evidence key to enhancing the effectiveness of the judiciary system in the country.

1.6.4 Regulatory framework for the management of court records

According to ISO 15489–1 (ISO, 2016), the policies and procedures of organisations should reflect the application of the regulatory environment to their business processes and an organisation should provide adequate evidence of its compliance with the regulatory environment in the records of its activities. The Association of Commonwealth Archivists and Records Managers (2002) states that records legislation should reflect emerging issues which reflect the creation and preservation of records. However most national archives in common wealth countries have a legislation based on UK Public Records Act of 1958 (Roper and Millar 1999:14)

Some of the laws are a hindrance in the proper storage of records, and this is supported by (Kemoni, 2008:62) as cited by (Nabombe, 2012:12), who observed a number of weaknesses in the Kenyan Public Archives and Documentation Services Act which include the limited power of the Director in regard to acquisitions and preservation of private records (considered to be private property). Secondly, the Director had no power over the issuing disposition authority (which was in the hands of a minister to which the department is responsible). Which might comprise the proper appraisal of the records and the records could continue be kept without proper storage.

There are several legal instruments guiding the court system in Zimbabwe. The Final draft Constitution of Zimbabwe No.20 (2013), sections 166-169) stipulates that judiciary authority derives from the people of Zimbabwe and is vested in the courts which comprise of the Constitutional court; the Supreme court; the High court; Labour court; the Administrative court; the Magistrates courts; the Customary laws courts. The Act of parliament may provide for the establishment, composition and jurisdiction of customary law courts whose jurisdiction consists in primarily in the application of customary law section 174(b), the Customary Law and Local Courts Acts section 162 chapter 7:05. Customary Law and Local courts Act (1990) [Chapter7:05] provide for the application of customary law in the determination of civil cases and provide for the constitution and jurisdiction of local courts. Chiefs and Headmen Act (1992) [Chapter29:01] provide for the appointment of chiefs and village Headmen and define their functions. This means that justice in the village court is executed by the Chief guided by the Customary Law and the Local Courts Act including the Communal Land Act.

The National Archives of Zimbabwe (NAZ) was established through an Act of Parliament in 1935 now known as the National Archives Act 1986. NAZ was thus established to be the storehouse of the nation's documented history. The National Archives of Zimbabwe Act of

1986 protects the High court records when they are transferred to the National Archives of Zimbabwe and stipulates all transfer of ownership procedures. This is how the unbroken chain of records ownership from the High Court of Zimbabwe to the NAZ is maintained, thereby these records being viewed as reliable, authentic and genuine (Bhebhe, 2015:110). The National Archives of Zimbabwe (NAZ) is mandated to give advice relating to the filing, maintenance and preservation of records of statutory bodies and to make recommendations with regard to the retention or destruction of its records (National Archives of Zimbabwe 1986). The study therefore sought to examine the regulatory framework guiding the creation and management of village courts records.

1.8 Study findings

1.8.1 Types of records created at the village courts.

The study sought to find out the types of records created at the village court. Findings of the study revealed that records were created emanating from various criminal and civil cases such family disputes over land demarcation, cattle grazing on other villagers' fields and lack of respect for other villagers. Most of the respondents seemed to be aware of the types of records created at the village court which include the case notes appeals, referral letters, main point of the courts proceedings, summons, the papers usual completed by the assessors and chief, this is where the chief writes his final verdict'. The researcher also discovered through conducting the interviews that the chief also recreates records by completing the Local Community (LC) forms together with his assessor. For example, LC1 form is for summoning the defendant, LC2 is for summoning the witness, LC3 is the form completed to transfer the case, LC4 form is used to record judgement just to name a few. These forms are from LC1 one to LC10 which is a form where the chief usually record the final verdict of the case.

1.8.2 Storage system for the management of court records in the Mzimuni village court

As part of the records management procedures and processes followed in the management of village court records, the study further sought to assess the storage systems for these records in terms of where and how records should be stored. In terms of the storage systems for court records at Mzimuni village, the respondents stated that the records are kept at the village clerks' homestead. The records are kept in one of the clerk's hut and he is responsible for their safety. No mention was made regarding filing the records, filing cabinets or cupboards or storage boxes.

1.8.2 Regulatory framework guiding the creation and management of village courts.

The study sought to find out which regulatory framework in the form of legislative instruments and policies guided the management of court records at Mzimuni village court.

Findings of the study revealed that there are some statutes that guide the management of these records. Respondents stated village courts recognised the laws of the country and abide by national legal statutes and cultures. The main document that guided them was the one given to Chiefs upon appointment, that is the Customary Law and Local Courts Act. However, it does not guide us as to how to manage the records. The respondents professed ignorance on the available records and archives policy documents used in Zimbabwe.

1.8.3 Challenges faced in the management of village court records at Mzimuni village.

The study sought to find out the challenges faced in the management of village court records. Findings of the study revealed that there were various challenges faced in managing these records. the greater challenge is that we do not have a proper court room and the records are not safe in the homestead of the village clerk.’ Several other respondents felt that the records were not safe in the homestead of the village clerk as they could be manipulated, and improper verdicts may be arrived at with the wrong people being convicted or released. meaning ‘we are not sure whether the records are correctly recorded since the village clerk does not have a recording machine’. Again they felt that records were being misinterpreted since the village clerk did not have proper instruments to use during the court proceedings. Since the records were kept in the village clerk’s homestead other respondents felt that it was too much responsibility for one person and the trustworthiness of the records was questionable.

Another revelation made is that there is no one who teaches us on how properly manage the records and how to properly document including how they should be kept and where we should keep them. Other challenges related to financial issues and how they affected the management of village court records. The respondents also highlighted that they do not have recording machines or other equipment to use during the court sessions and we even lack the knowledge on using computers and that was affecting records management practices. Other challenges went as far as relating to lack of support from government structures to support the management of village court records.

1.8.5 Strategies to improve the management of village court records at Mzimuni village court.

The study sought to find out the strategies meant to improve the management of court records at the village court. Findings of the study revealed several strategies which respondents suggested could be used to improve the management of court records.

The respondents highlighted the need for a donor who will help in the construction of the court room, for things to work out. The educated individuals from the Mzimuni village were

challenged to be socially responsible for the improvement of the district especially through the contribution of funds to construct the court room.

1.8.6 Discussion of Findings

The findings of the study revealed that records created in the village court include the case notes appeals, referral letters, main point of the court's proceedings, summons, LC forms usually completed by the assessors and chief. The types of cases that the village court deliberates on include civil and criminal cases such as family land disputes, grazing of cattle on other villagers' fields and lack of respects to other villagers. The chief writes his final verdict on the local community forms. The study by Namakula (2016:180) about the court and the right to fair trial in Botswana and Uganda also revealed that records created at the court are documentary evidence, exhibits, and summons, final orders of court, and records of court proceedings and criminal case records. Therefore, the findings of the both studies concur based on the type of records created by a court. The findings by Namakula (2016:178) focused on the high court records whilst the current study was looking at village court records.

The findings on how records are created revealed that the village clerk created them in the absence of a recorder. According to Namakula (2016:177) in the absence of recording system it is difficult to capture everything that would have been said. She went on to say that at time the clerk would record according to how she or he understood the person being tried. However the authenticity of these records is subject to doubt since there are no recorders used during the court proceedings. Monyadiwa (2015:45) however states that the Magistrate's Court Rules set standards for the taking of the criminal case record. Key observations are that the adjudicating officer maintains substantial control of and undertakes considerable responsibility for the process. In fact, the official minutes of judicial officers constitute the record. The record often appears first in manuscript (a handwritten version), whereupon it is typed. Based on the findings of the study and on what other scholars discovered; it seems that the unavailability of the correct instrument that is the recorder during the court proceedings in the judiciary system hinders the effective execution and delivery of justice.

Concerning the processes and procedures of records management in the village court and specifically awareness of the concept of records management by the respondents, the findings revealed that respondents had little knowledge on records management. They however knew that a record had to be kept from the current phase up until it reaches the noncurrent phase and records had to be separated depending on time of creation. This showed that they had practical knowledge however they are not aware of terms and record management theories

and terminology used. Mosweu (2018:238) revealed in her study that as the Magistrate's courts create paper records before they are captured in the electronic system, the life-cycle model is suited to be used to monitor how they are managed from creation to disposition. The life-cycle theory states that records can only live once at each stage in their life. They have a life span however if not properly managed they will die a premature death. This is in line with the theory of the study which is the life cycle concept where records have a life.

Other studies on the impediments of records by Mwikali (2013:95) also discovered similar problems; these included lack of training and lack of staff with formal qualifications on records management which was a major challenge to effective management of these records. This resulted in severe difficulties such as poor record keeping and lack of data networks, lack of transparency and consistency in the operations, furthermore there was neglect of training, rapid turnover of records staff, absence of appropriate legal frameworks for the destruction of records, outdated procedures, inadequate physical facilities and low status and attention paid to the records management task.

1.8.7 Recommendations

Based on the findings of this study it is apparent from the respondents, that is the chief, councilor, assessors, village clerk and the messengers at Mzimuni village court that there are many challenges associated with the management of court records which need great attention from various stakeholders. In light of the above findings and conclusions of the research, the researcher found it necessary to make the following recommendations:

To address the challenge of lack of infrastructure and storage facilities for court records at Mzimuni, instead of waiting for a donor, the community should work together and start a project based on the improvement of their village court through having a purpose built structure with the help of National Archives of Zimbabwe (NAZ) personnel who would advise them on correct processes and procedures for the management of court records. This would address the problem of records storage and threats of records manipulation.

The study also recommends that the councilor together with the chief can join together to organize a workshop where they will invite professionals from NAZ who would engage and train them on how to create and manage records accordingly. This will also assist village court officials as they will be educated on records management legislation that is the law and the policy formulation procedures.

The study also recommends implementation of the records management legislation and the formulation of a records management policy for village court records.

The government, especially the responsible Ministry of Local Government, Public Works and National Housing is also urged to participate and be involved in the running of village court activities and this will enable them to understand that village courts need funding. Such funds will help in the construction of the proper court infrastructure and also in establishing a proper storage room for village court records. Such funds may also assist in the purchase of proper furniture needed in the storage holdings of records. A motorbike could also be purchased which has a proper carrier for the messenger to carry court records around so that they are not damaged.

The study also recommends that the Ministry should also avail funds to purchase recording equipment for the village court such as audio and video recorders. This will enhance the recording and documentation of all village court proceedings in an accurate manner.

The study recommends that those responsible for managing records in the village court should be trained in computer literacy skills, it will enable them to capture the court records electronically and this will also solve the problem of space and again for preserving for a long time.

References

- Mosweu, T.L., Kenosi, L.(2018) *Implementation of the Court Records Management System in the delivery of justice at the Gaborone Magisterial District, Botswana*, Records Management Journal, Vol. 28 Issue: 3, pp.234-251, [Online] Available at <https://doi.org/10.1108/RMJ-11-2017-0033>
- Namakula C.S 2016, the court and the right to fair trial: Botswana and Uganda. African Human Rights Law Journal (175-203) [Online] Available: <http://dox.doi.org/10.17159/1996.2096/2016/v16n198> Accessed on 30 January 2019
- Mwikali, A. (2013) Impediments to Records Managements in Public Universities in Kenya, [Online] available at: www.emeraldinsight.com Accessed on 22 January 2019
- Bhebhe, S, (2015) *Contemporary diplomatics of the civil and deceased estate case files found at the national archives of Zimbabwe*, Records Management Journal, Vol. 25 Issue: 1, pp.

107-120, [Online] Available at: <https://doi.org/10.1108/RMJ-03-2014-0019> Accessed on 11February 2019.

Roper, M. and Millar, L. (1999), Managing Legal Records, International Records Management Trust, London.

Thurston, A. (2005), Fostering trust and transparency through information systems, ACARM Newsletter, Vol. 36, p.

Musembi, M. (2005) efficient records management as a basis of good governance [Online] Available at: http://africa.peacelink.org/wajibu/articles/art_9633.html Accessed 8th January 2019

Maseh, E. J. (2015) Records management readiness for Open government in the Kenyan Judiciary, University of KwaZulu-Natal

