

E-JUDICIARY: A STEP TOWARDS TRANSFORMING TANZANIAN LEGAL SYSTEMS



Juma Ally Mshana*

Abstract

This article is a result of a desk review of literature which was conducted against the backdrop of the global perspective of e-judiciary. The article shows how e-judiciary can lead to modernisation of Tanzanian Legal Systems. In so doing, the article appraises the current situation of ICT adoption and the prerequisite steps in establishing e-judiciary and automation of all courts in Tanzania. The article depicts the potential challenges to e-judiciary and implies how such challenges can be addressed if the judiciary were to benefit from e-judiciary. The article argues that the e-judiciary will not only facilitate lawyers and litigants in justice seeking, but will also ease the workload of clerical staff. It also argues that although some courts have to some extent been using ICT, one needs to know that the use of ICT is not a panacea. Rather, it is just a start of a long journey towards an e-judiciary system.

Keywords: Judiciary, E-Judiciary, Legal Systems

1.0 Introduction

Judiciary is defined as the judges of a country or a state when they are considered as a group.¹ Judiciary provides a mechanism for the resolution of disputes. Under the doctrine of separation of powers, the judiciary generally does not make statutory law (which is the responsibility of the legislature) or enforce law (which is the responsibility of the executive), but rather interprets the law and applies it to the facts of each case.

Legal Systems

There are various legal systems in the development of human civilisation. But the most dominant legal traditions and systems in the modern world are Western. This is because over the last couple of centuries, West European countries invaded and dominated much of the world and continue to do so today through their economic and military superiority. Thus it is the common law and civil law systems from Britain and the European continent respectively that are most prevalent on the African continent.²

E-judiciary is defined as a whole tech-based judicial system.³ When all functions of judiciary are automated rather than using manual methods, then we get the so called e-judiciary. This improves access of citizens to judicial system and effective judicial action, which consists of dispute settlement or the imposition of criminal sanction

ICT development in the field of information has brought a sea of change in all spheres of human activity. It has resulted in enhanced proficiency, productivity and transparency and has also reduced red-tape and corruption in organisation. The judicial system is also modernising its system by subscribing to new tools of technology. Indeed, legal systems all over the world are moving towards e-judiciary.

2 Structure of Judiciary of Tanzania

To automate fully the judicial systems of Tanzania, the structure of the judiciary needs to be clearly known. Since e-judiciary exists once the whole judicial systems are based on technology (application of ICT), then knowledge of the structure of judiciary helps in the know-how of automating the systems.

The Constitution of the United Republic of Tanzania, 1977 vests the authority and responsibility to administer justice in the Judiciary of Tanzania. The Judiciary has its foundation on **Article 107A (1)** and **107B** of the Constitution and states clearly about the independence of the Judiciary in the United Republic of Tanzania

The judiciary is formed by the various courts of judicature and is independent of the government. Tanzania adheres to and respects the constitutional principles of separation of powers. The Constitution makes provision for the establishment of an independent judiciary, and the respect for the principles of the rule of law, human rights and good governance.

The Judiciary in Tanzania can be illustrated as follows. It has four tiers: The Court of Appeal of the United Republic of Tanzania,

the High Courts for Mainland Tanzania and Tanzania Zanzibar, Magistrates Courts, which are at two levels, i.e. the Resident Magistrate Courts and the District Courts, both of which have concurrent jurisdiction. Primary Courts are the lowest in the judicial hierarchy. Therefore, to have e-judiciary in Tanzania, the automation should be done from the lower court to the highest court in the court hierarchy.

3 Why e-judiciary?

E-Governance is the key word in every department of life today. It increases productivity, enhances transparency and accountability, reduces red tape and corruption in administration. Technological developments in the field of ICT have made a turning point in the history of human development. It has brought about a sea of change in all fields of human activity. It has resulted in enhanced efficiency, productivity and quality of output in every walk of life. ICT has been advocated in the western countries for the last two or three decades. This scenario gained alarming thoughts to have technology combined in administration of justice. Former President of India once commented about introducing technology in courts in the following words:-

Technology is definitely an essential element of change in all spheres of life. The human element involved also is an important factor. If technology is properly used, it can bring about tremendous changes for the betterment of life. Any change we contemplate is for speedy justice delivery mechanism keeping in focus the quality, transparency and public accountability⁴.

In Tanzania there is an introduction of the agency known as e-government Agency (eGA) for the purpose of coordinating e-government initiatives. The eGA is a semi-autonomous institution established under the

* MBA-ITM (COVENTRY UNIVERSITY-UK), ADIT (IAA-TANZANIA), Assistant Lecturer, Secretary-editorial board -IJA journal, Coordinator-Diploma programmes, Institute of Judicial Administration Lushoto, Reviewer-African Journal of Information Systems.

1 Oxford Student's Dictionary, 2007, Oxford University Press
2 Issa G. Shivji et al (2004) Constitutional and Legal System of Tanzania, Mkuki na Nyota Publishers

3 Jahedul Islam Jahed (2017) E-courts and E-judiciary in Bangladesh, available from < <http://bdlawdigest.org/e-courts-and-e-judiciary-in-bangladesh.html>> accessed on March 16, 2018

4 Dr. Setlur B. N. Prakash (2014) E Judiciary: a Step towards Modernization in Indian Legal System, [Online] available at <http://jespnet.com/journals/Vol_1_No_1_June_2014/15.pdf> accessed on 11 January, 2018

Executive Agencies Act, No.30 Cap. 245 of 1997, with the mandate of coordination, oversight and promotion of e-government initiatives.

The Agency has been formed as an implementation of the Cabinet decisions made in 2004 and by Tanzania Presidential Instrument Government Notice No. 51 of 17/12/2010 that mandated President's Office Public Service Management (PO-PSM) to establish a focal point to coordinate the existing fragmented and isolated e-government initiatives in Tanzania. The Agency became operational effective 1st April 2012 and was officially inaugurated in July 2012. In order to meet its vision and achieve its mission, eGA has set objectives, which when accomplished, will allow it to meet the service requirements of its stakeholders and customers. These objectives are¹:-

- i. To enhance the capacity of Public institutions to implement e-Government initiatives;
- ii. To improve Public access to e-service
- iii. To improve sharing of ICT resources within public service;
- iv. To enhance coordination, management and compliance of e-Government initiatives in the public service; and
- v. To improve e-Government advisory, technical support and consultancy services;

In the court system (Judiciary of Tanzania), there are about 70 judges and 1,425 magistrates, 50 court administrators, and 4,510 court clerks and support staff. The court system receives about 50,000 cases per year in all types and levels of courts, of which about 30,000 are disposed of annually, thereby causing perpetual increase in in backlogs and

1 eGA (2018) What We Do [Online] available from <http://ega.go.tz/index.php/pages/page_details/18> accessed on 12 January, 2018

compounding delays.² Manual event-based systems and processes result in inefficient case management. Court administrators have been appointed recently in high courts and other major courts to introduce modern management systems and bring e-justice for effective service provision. It is due to this effort that there is a need of establishing e-judiciary so as to enhance transparency and accountability of the Judiciary of Tanzania. It is common knowledge that in many sectors ICT has been used as a tool, a changer, a catalyst, a sharpener, a solution to some of most annoying problems. Despite the reluctance of the bodies responsible for administration of justice to embrace ICT, one would still have encouraged the said bodies to employ ICT in their daily business to redress the problem of backlog of cases and delay.³ Sikalumba opines that judiciary should change the mindset of using manual based system and should employ ICT so that the citizens build faith to the government and judiciary because ICT will reduce the cost of accessing justice in terms of money and time.⁴

4 Automation of Magistrate Courts and Primary Courts

There have been efforts to improve ICT use in the judiciary with a view to enhancing efficiency. The ongoing reforms in the Judiciary of Tanzania (JOT) attest to the fact that ICT is increasingly playing a key role in delivery of justice. In the next five years, JOT will have to lay emphasis on the use of ICT across the process in which the Judiciary is involved. ICT should also be used to improve the systems that are currently in place such as Human Resource Management, Financial Management and Court Case Management among others.⁵

The courts in the High Court registries and the Court of Appeal they are somehow automated and the use of the ICT is increasingly seen. Although there are activities of the courts which are not done by using ICT, most

2 JOT Strategic Plan 2015/16-2019/20

3 Ubena John, *ICT as a solution to delay of cases in the administration of justice in Tanzania*, JTLS, vol 2, 2008, pp. 116.

4 Alex J. Sikalumba, *The Uses of ICT to provide timely and ethically justice*, Tanzania Law day February, 2018 (unpublished)

5 JOT Strategic Plan 2015/16-2019/20

of activities such as record keeping are automated. The Court of Appeal on the other hand is said to use ICT tools to record court proceedings and three cases have already been heard using such tools.⁶ The efforts that the judiciary has taken to implement ICT in such courts should also be applied to the Magistrate Courts and as Primary Courts as majority of cases are tried in such courts. It is therefore imperative that as a matter of prerequisite steps should be taken to automate trial courts.

Automating the courts not only need the hardware and software, but also needs those people working with the courts or legal system in Tanzania to be aware and willing to work and make use of ICT on their daily working. Barry argues that,

“Imagine that the computer software developer spends all the money allocated for writing software that the judges are unhappy with. Imagine that the hardware purchased for the program works satisfactorily, but in fact is not used that much by the judges and their staff, who complain that it makes their job harder than it was before. Imagine that lawyers criticize the e-judiciary project because it makes their jobs harder or more expensive, or makes no difference at all. And imagine also that someone wants to blame you for the disastrous decision to develop an e-judiciary. In this hypothetical case there may be powerful people who have no interest in your career or prosperity and who may decide that your e-judiciary project is not a winner, but a loser; and are planning to make you take the blame for it”.

6 Mshana Juma, *Effective use of Information and Communication Technology in Judicial Systems: Tanzania and Other Jurisdictions in Comparative Perspectives*, IJA Journal, Vol I, Issue No. 1, 2017 pp 23-33, ISSN 2467-4680

7 Barry Walsh (2011), *E-Justice Projects – Distinguishing Myths from Realities* [Online] available from <<http://www.iijusticia.org/docs/Barry.pdf>> accessed on 13 January, 2018

Implication of introduction of the Electronic Transaction Act means that the Civil Procedure Code Act [cap. 33 R.E 2002] and Criminal Procedure Act [cap. 20 R.E 2002] should be amended to provide for e-judiciary. The implication may however not cause serious problem once eFiling Rules is used. Mshana⁸ comments that the government has come out with the draft proposal known as *the Judicature and Application of Laws (E-filing) Rules, 2017* that allows the uses of electronic documents in the court. John Ubena⁹ comments that, any design, plan or realisation of information system must observe legislation and precedents. This means that law is a framework for information systems. Apparently, any information system that counters the law is likely to be illegal.¹⁰ Lukumay argues that the introduction of The Electronic Transaction Act, 2015 in Tanzania has changed the way the courts acted.¹¹ He rightly argues that the Act provides for the legal recognition of electronic transactions, e-government services, the use of ICT in collection of evidence, admissibility of electronic evidence, facilitation of secure electronic signature and other related issues.¹² Lukumay adds that:

*“Recognition of electronic transactions, admissibility of electronic evidence and recognition of electronic contracts have been long waited because prior to the Electronic Transactions Act, electronic transactions, electronic contracts or were not recognized under the laws in Tanzania”*¹³.

8 Mshana, Juma *Effective use of Information and Communication Technology in Judicial Systems: Tanzania and other Jurisdictions in Comparative perspectives*, IJA Journal 2017, Vol I Issue No. 1, p. 24

9 Ubena, John *Automation of Law and Legal Decision Making*, *The Tanzania Lawyer Journal*, 2015, p. 161

10 Ubena, John *Automation of Law and Legal Decision Making*, *The Tanzania Lawyer Journal*, 2015, p. 161

11 Zakayo Lukumay, *Foundation of admissibility of electronic evidence in Tanzania*, *LST Law Review*, Vol I, Issue 1, 2016 p. 141

12 Ibid, p. 149

13 Ibid p. 149

5 Network and its Expansion to the Rural Setup

The internet and network are crucial for the technology to function in a proper manner. If these things are not there, desktop or laptop usage will only be a replacement of a traditional typewriter. Replacement of the typewriter by the computer cannot be termed as e-judiciary. There must be a computer network technology that connects all courts with a stable internet connection for a meaningful use of the computer to be attained.

Judiciary must therefore ensure the availability of network and internet to all rural and urban courts. The best utilisation of technology in developing local area network (LAN) and wide area network (WAN) would in this way be put in to an effective use. However, challenges abound in the effective use of ICT in judicial systems. One of such challenges is unreliable internet connection.¹ The implication is that judiciary should make sure that there is availability of reliable internet connection to all courts so that the communication in judicial system and between different courts is guaranteed. This means that all courts should be connected by using National ICT BroadBand (NICTBB) which is managed by the Tanzania Communication Corporation earlier known as TTCL. NICTBB connects almost all regions and districts although sometimes connection is down or not found at all. Such problem is seemingly temporary as this is just the beginning.

6 Administrative Setup and Preliminaries

Capturing certain information like name of the parties, nature of the case, subject matter of the dispute, relief claimed, generation of order sheets, preparation of summons is an important work whenever a plaint is instituted in a court in e-judiciary environment. It is common knowledge that these steps take much time and consume lots of other resources such other human resource when

they are done manually. It is also important to note that the manual system denies litigants

opportunity to know the details of which stage and which consideration was needed.

Once the e-judiciary is implemented, these mechanical works will be done by the use of technology. The collated information will virtually facilitate the office to generate summons and notices almost instantaneously. The movement of papers and organised arrangement to track the said movement will be established. It will also enhance efficiency, access, timeliness, transparency, accountability, thus helping judiciary to provide adequate services. Necessarily, the files and case management systems will be electronic ones.² It follows that sharing and retrieving of documents will be much easier than before. Mshana summarises the benefits of e-judiciary thus:

Reducing the length of judicial proceedings, improving efficiency and effectiveness, and the more general objective of promoting confidence in justice system through the use of technologies are laudable aims and are unlikely to generate much dissention. However, given the nature and importance of the judiciary as one among the pillars of the state authority and compared to other public services, due process, impartiality and independence should also be carefully taken into account. This is especially when structural and procedural changes such as the ones driven by the introduction of technology, take place.³

There is little doubt that the capacity, turnover and output of the judiciary could be markedly improved by the establishment of e-judiciary. This will consequently contribute in justice delivery.

² Ibid p. 24
³ Ibid p. 24

7 Providing Laptops to judicial officers

Procurement of the hardware and software is an important step in achieving e-judiciary although it is not an end to itself. It should start with not only development and procurement of standardized software, but also training and provision of laptops and individual printers to each and every judicial officer. Such endeavours will enhance their ICT literacy and facilitate the process for the establishment of e-judiciary. Besides the judicial officers, the clerical and administrative staff will likewise need training as to how they should use computers network on daily basis. The network should be developed at the level of LAN, WAN and also an attempt to have national grid data bank should be taken.

Providing individual laptops with broad band facility will enhance their access to internet and facilities the use of internet in legal and judicial research. There is no doubt that such development will help judicial officers in deciding their cases in an effective manner. Aaltonen, Laarni and Tammela⁴ add that such facilities can also be used in presenting evidence, and in so doing the laptops can be connected to the AV cart, or parties can use an evidence camera with a projector. However, at present case materials are mostly on paper, and in most cases it is necessary to shuffle through several paper folders to view the necessary documents.

8.0 Advantages of e-judiciary in Tanzania Legal systems

Automating judicial activities and coming up with e-judiciary has a lot of advantages. The following are some of these advantages:-

8.1 Linking up courts

It is understandable that the leadership of a court institution that operates through numerous court locations would want to have access to a computer network that is capable of providing information about any case at any location. It is difficult to dispute that there are advantages to be gained by linking up the

⁴ Aaltonen I, Laarni J and Tammela K "Envisioning e-Justice for Criminal Justice Chain in Finland" *The Electronic Journal of e-Government* Volume 13 Issue 1 2015 (pp 56-66), available online at www.ejeg.com

case databases of different courthouses when they are each a part of some larger unitary system of courts. Barry⁵ argues that a network of that kind would enable a national chief justice or a peak judicial council to examine any case record, whether or not the case file was physically at hand.

It would enable statistics to be quickly compiled about system-wide case management trends. It would allow judicial inspectors to investigate complaints about the conduct of judges in particular cases, without the need to necessarily visit the court to examine the court files. And perhaps most conveniently, in cases where a decision of a lower court is appealed, networked information systems would allow the electronic record of the lower case to be readily accessed and re-used by the relevant appeal court.

Barry⁶ adds that improvements in performance of courts might not change at all, merely by being electronically linked, at least in terms of the speed at which cases might be disposed of. Such observation is in relation to court systems of middle income countries where the vast majority of cases filed in a single courthouse are processed to finality at the same courthouse, without reference to other parts of a court system. Even when there are high proportions of case decisions being appealed to other courts, the advantage of the appeal record being created electronically in a networked court system may have no impact at all on the speed at which the appeal is processed and heard. And while the capacity to see records at any point in a networked system may be attractive for a judicial council or judicial inspectors, it seldomly offers much utility to a judge who is responsible for processing a single case. Napoleon writes that the benefits of reforming judicial systems in this direction can be identified at different levels, from citizens involved in a court procedure, to lawyers, judges, prosecutors

⁵ Barry Walsh (2011) *E-Justice Projects – Distinguishing Myths from Realities* [Online] available at <<http://www.ijusticia.org/docs/Barry.pdf>> accessed on 17 January, 2017.

⁶ Ibid

and finally court civil servants.¹ The most important of these benefits is “time saving”. Indeed, for a number of procedures physical interaction between a civil servant and a citizen is not needed. Similarly, documents can be exchanged outside regular office hours through electronic mails. Additionally, disabled persons are ensured better access to court proceedings. Also, reduced stationary consumption and fuel consumption to and from courts promotes environmental protection. Finally, these reforms contribute to speedy delivery of judgments and judicial proceedings in general.

8.2 Speedy disposition of cases

Accepting a document electronically implies savings in time and effort, at least to the point of initiating a new case record in a court registry. But consider the limitations of e-filing when it is implied that it will speed up the duration of a trial or the production of a final judgment. Barry² defines e-file as a means of providing the document to a court in an electronic form, either in lieu of a paper document or in addition to it. Many courts introduce e-filing facilities as a service to litigants, but do not necessarily relax the obligation either that the paper version also be filed or that the court itself prints a paper version from the electronic version that is lodged. It is still relatively rare for courts of general jurisdiction to abolish using a paper version of the original claim document that is lodged. The court may still process paper in the old way, but use e-filing to speed up the registration process alone.

E-filing allows a court to capture data from an original document to be used to create an electronic summary of the court case for future case tracking, thereby improving case management. Those benefits, however, will not be the direct result of e-filing, as an electronic case record can be created by court

¹ Napoleon Xanthoulis, *Introducing the concept of 'E-justice' in Europe: How adding an 'E' becomes a modern challenge for Greece and the EU* [Online] available from <http://effectius.com/yahoo_site_admin/assets/docs/Introducing_the_concept_of_e-justice_in_Europe_by_Napoleon_Xanthoulis.20775004.pdf> accessed on 23 January, 2018

² Barry Walsh (2011) *E-Justice Projects – Distinguishing Myths from Realities* [Online] available at <<http://www.iijusticia.org/docs/Barry.pdf>> accessed on 17 January, 2018.

registries regardless of whether initial filing is electronic or by paper alone. E-filing is good only to a certain point in time; a point that occurs well before a case is actually heard and determined. So it is misleading, if not incorrect, to suggest that e-filing will reduce case disposition times. Barry³ comments that, it can produce net benefits to the lodging party; but a corresponding benefit will accrue to the court only when the court also decides that it neither requires the filing of a paper document, nor later asks that the document be printed for use in court. But even in these cases of paperless lodgment, the direct benefit is limited to savings that accrue to the lodging party, i.e. the cost of printing the document and delivering it to the court registry, usually a small cost saving compared to the overall costs of litigation

8.3 Minimising Human/Clerical errors

One of the great benefits of electronic lodgment of new cases is that it provides the means for more accurately recording summary information about the case. Courts that do not have e-filing will need to transcribe summary information from a newly filed paper document to either a paper register book or to an electronic case tracking system (sometimes both). This process can give rise to transcription errors, as it is ordinarily performed by court staff working from paper to computer screens. Where there is e-filing, on the other hand, it is the lodging party who would provide summary information about the case when lodging the electronic document; and that can be processed by software rather than by court staff.

8.4 Lowering Costs

While lawyers are motivated to reduce costs for their clients, they are not necessarily motivated to reduce their own fees that they charge to their clients. In the case of costs of filing a document in a court or paying a court fee, these are costs that lawyers typically pass directly on to their clients. Ubena⁴ argues that the filing of document electronically

³ Ibid

⁴ Ubena, John *ICT as a solution to delay of cases in the Administration of Justice in Tanzania, The Tanzania Lawyer Journal*, 2008, p. 121

will minimize the cost to the parties as most costs are eliminated. They include travelling expenses to the court. This will also spare the court's precious time.

8.5 Eliminates corruption

One of the greatest advantages of electronic case tracking systems, usually a core element of any e-judiciary innovation, is that it can provide a level of transparency and information quality control that is not available to the same degree in systems that lack computers. Automated data is more likely to be recorded promptly, accurately, completely and transparently than otherwise. This has the advantage of preventing low level corruption in court registries where court staff may be in the habit of seeking additional and secret payments from lawyers and others to register documents or to trace a case file. Barry⁵ says,

Under electronically managed systems, it is harder for court staff to sustain corrupt practices that are based on their ability to lose records or otherwise restrict access to information about case files and documents. Again, however, as a justification for introducing automation in courts, its role as an anti-corruption measure should be proportionate to the extent of the problem. If there is a problem of there being corrupt judges willing to sell the outcome of a case to the highest bidder, then it is unlikely that automation will have an impact on that problem.

8.6 Speedy recording of court proceedings

Speedy recording of court proceedings is a common challenge facing most court systems across the world. This challenge can greatly be addressed by e-judiciary. Barry summarises the challenge as follow.

Many court systems across the world suffer from a limited capacity to record formal court proceedings in the courtroom, either by verbatim

⁵ Barry Walsh (2011) *E-Justice Projects – Distinguishing Myths from Realities* [Online] available at <<http://www.iijusticia.org/docs/Barry.pdf>> accessed on 17 January, 2018

*records of what is said or by production of summarized minutes of the main events. In poorly developed systems, the judge will record minutes by pen in longhand, or there will be a stenographer using a keyboard or shorthand. The constraint imposed by these options is that each is vulnerable to human error arising from fatigue or prejudice. Most people readily recognize the likelihood that court proceedings recorded by pen and longhand are not likely to be very complete or very accurate.*⁶

When court minutes are recorded exclusively by a presiding magistrate or judge who is corrupt or incompetent, then the lack of a more reliable form of independent recording is likely to facilitate that corruption. The introduction of audio visual technology will offer the prospect of improving reliability and completeness of court recording; and it will also speed up court proceedings. But the problem with this is that usually judges and lawyers will not be happy, just to listen or to look – they almost always want to read the record as text.

8.7 Defies distance in giving testimony

Usage of video conferencing in courtrooms is undoubtedly advantageous; its impact is occasionally revolutionary. Magistrates and judges will consistently prefer that those who are bound to attend a court hearing are physically present, video conferencing being used when physical attendance is impractical or unreasonably expensive. Courts will regularly use video conferencing to conduct hearings on procedural matters, such as between the presiding judge and lawyers who are based in different cities or countries.

On the other hand, video conferencing is effectively used for vulnerable witnesses who might be unreasonably intimidated if they are present in a public courtroom, such as child victims of sexual assault. Video conferencing has also been used to arrange for prisoners to virtually “appear” in a court hearing that

⁶ Ibid

is considering the prisoner's bail application or a procedural hearing, thereby avoiding the expense to the state in bringing a prisoner to a court only for a short court appearance.

Ubena¹ observes that video conference as a tool is very interesting; the parties need not appear physically before the courthouse. Evidence may be produced, the demeanor of the party may be observed by the judge or magistrate. However, to get the precise or the best out of it the bandwidths for transmission of video and audio data are necessary.

8.8 Improves quality of judgments

As a tool for educating judges, there can be no more practical substitute for law books than giving judges generous access to computers and the wealth of information accessible over the Web. A network of computers that judges may use will enable them to access information produced by the court and also information that is available via the Internet. Mshana² comments that, one among the advantages of implementing ICT in judicial systems is that, it can be used as the research tool.

When judges cannot get access to an up-to-date set of law books, the next best thing must surely be accessing an electronic reading device and a subscription to law books, usually at a much lower cost than purchasing the books themselves. To give judges that kind of access, all that is often required is to provide wireless internet services to them in courthouses and the budget necessary to give them access to commercially published law books.

8.9 Facilitates Communications and Access to Judicial Services

The need to deliver a copy of a claim to a defendant in any civil or criminal case is the first, and usually essential, preliminary step before courts can validly do their work.

Barry³ referred to this step as "serving" or "service" of initial court process. Apparently, this step can delay the active engagement of courts in dispute resolution, sometimes for many years when there are difficulties in finding a defendant.

Service is usually achieved by handing a copy of the initial court document to the defendant in person or, in certain circumstances, sending the document by courier or through a reliable postal service. In an age of widespread email and mobile phone usage, e-judiciary can be used as a substitute for traditional means of service. However, it is rare for a court to accept that the initial service of a claim may be served by email or phone text message. This is because the whole purpose of service is to ensure that the correct person is served. In no country is there legal recognition of email addresses as a valid means of serving formal documents on individuals unless the recipient accepts that form of notification.

9.0 Potential Challenges to e-judiciary

There are number of challenges to e-judiciary as discussed here under:-

9.1 Infrastructure

Social, geographical and economic disparity issues have to be removed and proper infrastructure is required to establish e-judiciary. Some of the courts in Tanzania lack computers and there is no electricity. As per JOT strategic Plan, it shows that many courts that exist do not have computers, functional recording equipment, and consistent supply of electricity.⁴ Lack or weakness of ICT infrastructure is one of the major challenges for e-judiciary implementation. Internetworking is required to enable appropriate sharing of information and open up new channels for communication and delivery of new services.⁵ Electricity, internet and poor adaptability of ICT will retard the progress of e-judiciary. In the context of developing countries, there

should be enough basic facilities in order to give impetus to e-judiciary. The ICT facilities need to be developed and should be available to one and all citizens. Internet connection through satellite, phone lines or through cable (NICTBB) should be accessible for all especially to the people in rural areas.

9.2 Privacy and Security

Privacy and security pose critical challenges of e-governance. Financial services, medical services and personal information are to be protected with security.⁶ Judicial information such as court proceedings, personal information, information of witness, and decision of the court demand transactional security. Implementation of e-judiciary projects must have security standard and protocols for safeguarding the interest of all classes of masses, failure of which citizens will lose trust and confidence in e-judiciary.

9.3 Accessibility and Acceptance

Any service should be accessible by anybody from anywhere at any time. Even if internet population is exponentially growing in Tanzania, there is still a significant portion of the people who may not be able to access services for various reasons like limited access to ICT technologies and devices, low literacy, and phobia for computer. Therefore, universal access is still trickery.

People especially in rural areas are often not expert users and need guidance and support for their transaction. Judiciary websites must be user friendly, to be effective. A reconceptualisation of judiciary services is mandatory for successful implementation and to get social acceptance

9.4 Cost

Economical issues are mainly concerned with return of investment and safeguard of the previous ones. Cost of implementation, operational and evolutionary maintenance must be low enough to guarantee a good cost/benefit ratio. It has been said in this regard that:

*"Lack of financial support is considered as significant obstacle to the implementation of e-judiciary in many countries. It is necessary to ensure the availability of the existing and expected budgetary resources in order to achieve the goals. The most serious and significant barrier to the implementation of e-judiciary is a lack of money; e-judiciary implementation is expensive."*⁷

The total cost, including the high cost of systems hardware and maintenance, software, training and education, are always seen as major barriers inhibiting agencies and governments from using ICT.

10. Conclusion

ICT has paved its way and has made a firm inroad in to the judicial field of the country. For this purpose the days are not far off that we may have to translate all legal texts from what so ever language it is in to the digital language as understood by the computers and systems akin thereto. The challenge for a court that has a case information management database is in using it strategically. Often judges are unaccustomed to acting creatively to process their caseloads in more effective ways, even when the technology for generating case intelligence is available to them. Statistics may be compiled and annual reports published with detailed data about caseloads, but judges may not necessarily use that data in reaching decisions they make about case management. The cost of technology may be substantial, but there will still be a question as to whether the expected benefits will be actively realised in practice.

Similarly, E-filing systems may be introduced, but cases may then take their place in a long line of backlogs, without a discernable improvement in delays or the cost of litigation. Courtroom recording systems may take advantage of the best levels of available recording and transcript production, without

1 Ubena, John. *ICT as a solution to delay of cases in the administration of justice in Tanzania, The Tanzania Lawyer Journal*, 2008, pg 116-130

2 Mshana, Juma *Effective use of Information and Communication Technology in Judicial Systems: Tanzania and Other Jurisdictions in Comparative Perspective, IJA Journal Volume 1 Issue No. 1 November, 2017 pg 23-33*

3 Barry Walsh (2011) *E-Justice Projects – Distinguishing Myths from Realities* [Online] available at <<http://www.ijusticia.org/docs/Barry.pdf>> accessed on 17 January, 2017

4 JOT Strategic Plan 2015/16-2019/20 pp. 11

5 Alshehri et al (2010) *Implementation of e-government: advantages and challenges* available at <https://research-repository.griffith.edu.au/bitstream/handle/10072/40620/72631_1.pdf%3Bsequence=1> accessed on April 18, 2018

6 Nagaraja K., *E-Governance in India: Issues and Challenges*, IOSR Journal of Economics and Finance, .Volume 7, Issue 5 Ver. IV (Sep. - Oct. 2016), PP 50-54

7 Alshehri et al (2010) *Implementation of e-government: advantages and challenges* available at <https://research-repository.griffith.edu.au/bitstream/handle/10072/40620/72631_1.pdf%3Bsequence=1> accessed on April 18, 2018

any change in the time it takes for a court to complete the trial and deliver its verdict. And information systems for the education of judges may become fully accessible using technology, without necessarily revealing improvements in the quality of judicial

decisions or rates of appeals to higher courts. In justifying the development of e-judiciary systems it is prudent to consider the likely cost against the likely benefits and the risks that, after all the effort is over, courts may simply carry on as they have always done.