



# **TECHNOLOGY TRANSFORMATION IN LEGAL PRACTICE: THE USE OF E-SYSTEMS IN ADJUDICATION**

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**PRESENTATION**

**BY**

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**THE DIGITISATION OF COURT PROCESSES IN UGANDA. PROSPECTS AND CHALLENGES OF ECCMIS TO THE UGANDAN BAR**

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## Abstract

This paper discusses the digitisation of court processes in Uganda with the emphasis on the prospects and challenges of ECCMIS to the Ugandan Bar. The paper begins by giving an introduction about digitisation of court processes globally. It then highlights the background of ECCMIS globally, putting emphasis on the Regional, Sub-regional and national judiciaries. The presentation then discusses the prospects of ECCMIS drawing examples from judiciaries of different countries. The paper further discusses the Digitization of Court Processes in African Regional, Sub-regional and National Judicial Institutions. It later on addresses the Challenges of Digitizing Court Processes in African Regional, Subregional and National Courts. The study then discusses ECCMIS and the Ugandan Bar highlighting its challenges to the Bar. It finally presents some of the relevant recommendations that can be considered in improving ECCMIS in Uganda.

*Keywords: ECCMIS/ECMIS, E-Justice, E-Judiciary, ICT, Access to Justice.*

## INTRODUCTION

Digital technology has been transforming the operation of public services in several countries and regions. The ability of IT officers working in judicial institutions to embrace the digital transformation of African regional and subregional courts through the digitization of court processes depends on the strategies identified as efficient in their organization's geographic region (African Court on Human and Peoples' Rights, 2015). The digitization of court processes refers to the use of technology-based solutions such as machine learning, case management systems, process automation, online conflict resolution, and data visualization to build a more innovative justice system (Cordella & Contini, 2020; International Development Law Organization, 2020). The lack of strategies for digitizing court processes exposed the African regional

and subregional courts to new risks that are specific to digital environments and not present in the paper-based world. IT officers working as assistant computer system analysts (ACSAs), computer system analysts (CSAs), and heads of IT (HITs) in African regional and subregional judicial institutions must use clear policy goals with well developed procedures, all based on efficient strategies to drive the digitization of their organizations' court processes. The purpose of this presentation is to explore the prospects and challenges of ECCMIS to the Ugandan Bar. The first section of this presentation presents a background to ECCMIS and the whole concept of e-justice.

## BACKGROUND

In reaction to the huge development Information Communication and

Technology (ICT) is bringing into the world, the Judiciary of Uganda has migrated from paper-based filing system to Electronic Court Case Management Information System (ECCMIS), herein after to be referred to as ECCMIS. In some jurisdictions like Malawi, it is called the Electronic Case Management System (ECMS). Notwithstanding the nomenclature, the system accords everyone from judges, lawyers and parties to a case an opportunity to track case progress through an integrated national e-justice system that streamlines processes, eases administration and, most importantly, supports citizen access to a most transparent robust back-end system (Ndau, 2016). The ECCMIS is the key success factor in the judicial system. The systematic, efficient and organised case records provide comprehensive information for courts to guarantee unbiased decisions

(Watson, 2014). Transparent information system and good case management indirectly hinder the misuse of power or corruption, case postponement and delayed decision (Satirah, Saman, & Haider, 2012). It also reflects the good image of judicial system and upholds the rights of individual and society at large. The establishment of the ECCMIS is one of the major reforms that have taken place in the administration of justice by the judiciary of Uganda.

Juma (2013) quoting the then Malawi Chief Justice Dr. Anastasia Msosa (Senior Counsel) as she presided over a sherry party in Blantyre which took place on 30th September, 2013 states that:

“The establishment of the computerized system is part of the ongoing efforts and innovations being implemented by the judiciary of Malawi to bring about establishing a computerized case management system to replace the manual one which has been used by the courts for decades and that this system is aimed at bringing about efficiency in the administration of cases, and improve service delivery by the courts”.

Watson (2014) observed that ECCMIS, is intended to form a baseline for daily support of the judiciary’s business operations, thus enhancing the sector and improving the country’s justice system, in particular on access to justice for all.

Electronic justice (e-justice) systems transform and provide more accessible, transparent, and efficient justice systems to communities (Shah & Gupta, 2017). As Bajandas and Ray (2018) observed, government stakeholders undertake the digitization of court processes to improve the productivity, consistency, case flow, and quality of e-justice systems. One such stakeholder is the African Court on Human and Peoples’ Rights (2015), which recommended in 2015 the development of strategies for digitizing court processes to improve the delivery of justice for the African Union member states. Yet, despite the multiple efforts of IT officers, the development of strategies for digitizing court processes to create or improve e-justice systems remains a global challenge (Sousa & Guimaraes, 2017).

The digitization of court processes for an e-justice system requires the participation of critical stakeholders such as IT officers, judicial and legal practitioners, and the citizens of the concerned community (Manker, 2015). The role of the IT officer is critical in the evaluation of the stakeholders’ needs and the development of strategies to maximize the quality of e-justice systems. IT officers work with other stakeholders to collect and translate their needs into electronic formats based on predefined quality standards (Raikhanova et al., 2017). The capturing of the stakeholders’ needs

follows an accurate analysis designed to detect and define the processes that present improvement opportunities (Bajandas & Ray, 2018). An understanding of IT officers’ strategies for working with stakeholders may provide insight on ways to expand e-justice activities.

“E-justice” connotes the use of Information Communication Technology (ICT) to facilitate citizen access to justice and effective judicial action, which consists of dispute settlement or the imposition of criminal sanctions. E-justice is a key element in the modernization of judicial systems aimed at improving access to justice, increasing cooperation between legal authorities, strengthening the justice system and improving legal institutions and the overall administration of law...[it] could increase productivity and diminishes transaction costs within a system that is highly information intensive; reduces the duration of procedures, thus saving both time and money, and puts systems for document handling and processing within the reach of Judges and courts; provide the best information available and a better understanding of both the way the courts work and the legal instruments that citizens have to ensure recognition of their rights; facilitate improved control over cases and allow a better qualitative and quantitative evaluation of outputs.

The Judiciary in Uganda launched and rolled out ECCMIS in selected courts majorly in Kampala and surrounding areas. The system was launched early this year and implemented by pilot courts effective 01 March 2022. ECCMIS is a fully-featured digital system that automates and tracks all aspects of a court case life cycle. ECCMIS has dealt away with the traditional

Court Case Administration System (CCAS) - a paper docket system.

This presentation highlights the prospects and challenges of ECCMIS in Uganda's adjudication processes. Although ECCMIS is still at its infancy in Uganda (less than one year old since implementation), multiple

challenges have been experienced by different stakeholders including judicial officers, legal practitioners, court staff, IT staff attached to courts, staff working with law firms (specifically court process servers) and the litigants. The next section discusses the prospects of ECCMIS drawing examples in judiciaries of different countries.

## THE USE OF ELECTRONIC CASE MANAGEMENT SYSTEM IN DIFFERENT COUNTRIES

Whereas the concept of ECCMIS is new in Uganda, it has been in existence in some countries including African judiciaries and has existed for more than a decade. Many countries have embraced Information Technology use in their court systems. Transparency and effectiveness are emphasized as two positive consequences of the use of ECMS in courts. It has expanded the possibilities of access to information and judicial decisions any time of the day of the week (24/7) (Mbugua, 2010). This section presents how ECCMIS or ECMS has been applied in some judiciaries globally.

### ECMS in Australia

Australia has a federal system of government, and thus its judicial system is made up of 10 separate but interrelated systems; the commonwealth, six states and three self-governing territories. The use of ECMS in the justice system in Australia begun in 1980s and has been improving over the years. The system performs several functions among them; Litigation support, Evidence presentation, Electronic courtrooms, Knowledge management, Electronic filing, Electronic search, E-courts and Integrated justice (FCA, 2009).

*"Many countries have embraced Information Technology use in their court systems"*

### ECMS in Lesotho

Molomo (2013) discuss that the ECMS implemented by the High Court of Lesotho, the Maseru Magistrate Court, and the new Commercial Court, was customized from a configurable, Commercial-Off-The-Shelf tool supplied by Synergy International Systems. Molomo however was quick to point out that many of the court staff have never even worked professionally with computers. Molomo further explained that the ECMS helps to reduce backlog of cases, improve management of files, tracking movements of files, ensure timeous and comprehensive reporting of cases and accelerate the case processing time, faster delivery of judgments and

ensure data on all cases is readily available.

### ECMS in Kenya

Mbugua, (2012) noted that the commissioning of the ECMS in Kenya on 15th day of February 2011, indicated great transformation prospects in an organ of government that has been perceived as conservative and insular. The court can now electronically manage a case from the filing state to its final disposition, while providing information to litigants, advocates and the public through web-based and mobile phone application. Mbugua further states Eldoret Court station was the first in Kenya to implement the ECMS and

that now it boasts of the successful implementation and reap the benefits of this project. Some of the benefits include; efficiency of service, job satisfaction among staffs, information security and reduced fraud and corruption in the delivery of court services.

### **ECMS in California**

Gartner (2009) found that

the ECMS is deployed in all trial courts in California and hosted at the California Courts Technology Center Cases & Courtrooms and that the ECMS application manages civil, small claims, probate, criminal, traffic, family law, juvenile dependency, and juvenile delinquency cases.

Gartner (2009) wrote that

ECMS services include the following: Case Initiation, Case Management, calendaring, Filings Judicial notices, officer monitoring of cases, Rulings and judgments, probate notes, hearings/courtroom events, exhibits storage, register of actions on each file, disposition of cases and appeals.

## **DIGITIZATION OF COURT PROCESSES IN AFRICAN REGIONAL, SUB-REGIONAL AND NATIONAL JUDICIAL INSTITUTIONS**

### **Digitisation**

Digitization refers to the process of converting materials from analog formats that humans can read into a digital format that only machines can read (Parviainen et al., 2017). Digitization is the process that converts analog content into a sequence of zeros (0s) and (1s), a binary code format readable on a computer with the possibility of storage on various digital storage media such as hard drives, compact disk read-only memory (CD ROM), and digital versatile disk read-only memory (DVD ROM). Bandi et al. (2017) stated that digitization affords access to data and information resources to several users at the same time while removing the physical location and distance constraints. Bandi et al. noted that digitization involves the use of IT tools to make resources available for different users in various remote locations and helps reduce the cost of

handling. Digitization makes information accessible from a digital device anywhere, anytime, and within many different contexts.

The second African judicial dialogue conference recommended incorporating technology in court processes in the regional, subregional, and national courts to enhance access to justice and facilitate judicial operations (The African Court on Human and Peoples' Rights, 2015). The use of ICT in developing countries' judicial institutions improves the access and delivery of justice and reduces the cost of judicial procedures (Benyekhlef et al., 2015). The second African judicial conference encouraged the use of technology-based case management processes, including electronic case filing, mobile applications, and video conferencing technology to receive evidence and testimonies (African Court on Human and Peoples' Rights, 2015).

Regional Economic Communities (RECs) are regional groupings of African states, which established regional courts with various jurisdictions and competencies over the years. According to Fon (2019), these regional courts include the Economic Community of West African States (ECOWAS) Community Court of Justice (ECCJ), the East African Court of Justice (EACJ), the Common Market for Eastern and Southern Africa (COMESA) Court of Justice, and the Southern African Development Community (SADC) Tribunal. Fon (2019) stated that the most prominent African courts at the continental level include the African Court on Human and People's Rights, the Organization for the Harmonization of Business Laws, and the African Union Chambers from the trial of former Chadian dictator Hissene Habre. This presentation considers the

African continental courts as regional courts and the REC courts as subregional courts.

The relationship between ICT and the performance of the judiciary is another matter worth considering. According to Bosire et al. (2018), ICT had a significant influence on the Kenyan judiciary system and affected the operational performance of their judicial system. The use of a customer-focused delivery of service system within Kenyan courts also helped in improving the level of confidence in the institution, which is a crucial factor in eliminating or reducing the lawyer-based or parties-based case delays.

The digitization of court processes aims to improve the efficiency of judicial systems based on the standardization of procedures, generation, storage of quality information, and faster access to information. According to Muscalu and Hulpus (2016), the strategy for digitizing court procedures considers the four major areas, which are (a) the efficiency of judicial procedures, (b) the increase of the level of transparency, (c) the improvement of the level of information security, (d) the integration of human capital, financial and material resources. According to Weers (2016), digital court procedures allow collecting an immense amount of data while improving courts' performance in real-time for human resources, backlogs, efficiency, and quality of decisions.

## Digitisation of Processes

The digitization of processes, also known as digitalization, refers to the use of digital technologies to change a business model and create more value (Salkute, 2019). Fler (2018) stated that in governments, the digitization of administrations consists of changing the administrative organization and providing standards to manage and administer the rights, duties, and preferences of the citizens. According to Buck and Eder (2018), the vulgarization of computers and digital information in administrations evolved into hybrid administrations that function with both analog and digital systems. Parviainen et al. (2017) indicated that the literature describes digitalization as digital transformation and the ability to transform products or services into digital variants. However, Fler (2018) stated that the question of how IT can support administrative processes has now evolved into how digital information processes can replace administrative processes, with the possibility of process automation.

Digitization of processes has also influenced the management of archives in various organizations. According to Kell and Booker (2018), the United Nations Educational Scientific and Cultural Organization (UNESCO) declared in 2011 that the process of archive management should follow an archival protocol that ensures the authenticity, reliability, integrity, and

usability of archive content. Archives should remain accessible to everybody while respecting the applicable laws and rights of individuals, creators, owners, and users. The concept of information centralization is specific to archiving and the associated procedures, protocols, and information management. Kell and Booker (2018) also stated that workflow systems are central to archiving practice. Workflows are also specific to digitization processes as they allow defining specific validation steps that guide the execution of processes. Kayikci (2018) noted that digitization in logistics includes six main concepts, which are cooperation, connectivity, adaptiveness, integration, autonomous control, and cognitive improvement. Kayikci also noted that the latter all contribute to making information and communication available anywhere, anytime, in a particular context using a digital device and based on a set of data access rules. According to Eiseman et al. (2016), the case study related to the digitization undertaken in the Lillian Goldman Law Library at Yale Law School allowed the organization, description, and analysis of notebooks in a website using a database, bibliography, inventory, and links for images. Additionally, Eiseman et al. stated that the digitization of processes underlines several essential questions related to the creation, preservation, management of information, and access to the digital images on the Litchfield Law

School sources web portal.

### **Perspectives and Prospects on Digitizing Court Processes**

The digitization of judicial systems offers, in several cases, an increase in productivity, transparency, access to justice, a reduction of transaction costs, and trial length (Drossos et al., 2018). This increase in efficiency indicates that IT and e-justice systems contribute to the reduction of court case backlogs by improving productivity and access to justice. Muscalu and Hulpus's (2016) research on the digitization of court processes in developed European countries revealed that electronic workflows in courts enable faster clearance rates of cases and easier access to the judicial system. Singh et al. (2018) noted that the planning and designing of e-justice systems require ICT infrastructure and ICT training. Digitization of court processes generally consists of deploying electronic systems for the administration of justice with various perspectives and prospects, which includes one or more of the following components or features:

#### **Electronic Case Filing**

Over the years, the manual procedures of filing in courts have illustrated several limits and risks such as human error, corruption, misplaced files, and transmission delays. According to Mohamad et al. (2019), the introduction of e-filing provides several

advantages, such as a tremendous increase in the speed of applications and transmission of court documents for faster disposal of cases. E-filing provides the possibility to file anytime in a day, 7 days a week, with the instant filing receipt and allocation of application number. In addition, the e-filing system automatically checks the information provided in the electronic application over the internet before saving the latter in an approved standard format in the platform's database for future review. Shah and Gupta (2017) stated that the use of e-filing and internet service allows fewer paperwork burdens and better connectivity between case stakeholders for an improved administration of justice. However, e-filing also enables court clerks to work more efficiently as it considerably reduces the time and efforts spent to manage bundle cases. Furthermore, e-filing reduces file storage, record retrieval time frames, docketing, scheduling, and paper utilization, while providing transparency during proceedings. According to Mohamad et al. (2019), the adoption of an e-filing system and a case management system in the Malaysian justice system contributed to increasing the transparency, productivity, and efficiency of the courts, which helped in decreasing the backlog of cases.

Hassan et al. (2012) stated that South Korea began using electronic court systems in its Master Plan in 2001 with an

electronic case filing system (ECFS) as the backbone of the e-court system. In 2003, the judicial electronic project announced the e-filing and serving of court documents by the end of 2004. The construction of the ECFS was fully completed and implemented for civil cases later on in 2010 for patent cases. Hassan et al. also indicated that the implementation of ECFS for other civil cases such as administrative, family, or petition filing started between 2011 and 2013.

According to Bajandas and Ray (2018), ECMS provides a secured means for external persons to file 16 cases, submit evidence and various types of information, and access already existing records. Bajandas and Ray also stated that the implementation of the ECFS in the United States for the federal agency adjudication began in 2014 and, once stable, allowed reversing the existing situation with about 20% of the case processing time for case adjudication and 80% to gather and organize case information as well as assign cases.

#### **Electronic Case Management System**

According to Singh et al. (2018), ECMS refers to a platform that allows handling case procedures securely and systematically for the parties, court staff, officers, and judges. The purpose of the ECMS is to ensure the prompt and efficient treatment of

cases. It has the ability to provide important case-related information such as the number and status of pending cases, decisions yet to be issued, the number of completed or not completed trials, statistical reports, and the status of completed cases and archives.

Mohamad et al. (2019) stated that ECMS allows the automation of case processes and includes a planner to manage cases using the case application references and dates. Mohamad et al. noted that ECMS also offers the possibility to perform various tasks concurrently and speedily, facilitating the treatment of case backlogs until the complete clearance of queue. The strategies used for the digitization of court processes aim to respond to judicial institutions' primary goal, which is the administration and delivery of justice.

Bajandas and Ray (2018) argued that in the United States, the critical factor for the successful implementation of the ECMS in federal agency adjudication was to ensure that no data loss occurred during the migration, transition, and early implementation phases as case managers and data entry personnel had to operate on a hybrid system (electronic and 17 paper). The implementation required the recruitment of temporary employees to assist in every role in the case process for judges, law clerks, and docket management employees.

Also, policy group employees contributed to the successful adoption of the ECMS. In Europe, the Case Flow Management Net-project (CFMnet-project) is a European Union (EU)-funded research project that aimed to address the issue of court delays for a faster and more efficient flow of court procedures. In undertaking the CFMnet-project, stakeholders aimed to create a handbook and online platform articulated around identified, developed and shared best civil law practices. The project included a case management handbook with functional case flow management procedures such as electronic tools for monitoring or e-filing, and a case management improvement platform, which provided the necessary solutions for the interaction between the court stakeholders of the EU countries (Weers, 2016).

According to Weers (2016), CFMnet required the collective efforts of several researchers and the visit of civil law countries of Austria, Belgium, Czech Republic, Estonia, Finland, Germany, Italy, the Netherlands, Portugal, Slovenia, Spain, and Sweden with a focus on the following areas:

- legislative measures for timeliness in civil proceedings;
- judicial case management;
- performance management;
- use of ICT in court proceedings; and
- EU cross-border disputes

Bajandas and Ray (2018) noted that beyond the possibility of improving the filing procedure, submission of evidence, maintenance of records, and management of court 18 procedures, ECMS provides the opportunity to improve court processes. Bajandas and Ray indicated that EMCS is promising for the improvement of productivity, streamlined case flow, and reduction of case processing time, and better quality.

ECMS usually operates with an integrated electronic calendar or side-by-side with electronic docketing and scheduling systems that are crucial in managing case processes. Vasista (2018) argued that another critical factor in deploying an ECMS that offers significant value is the possibility to replace failing systems in courts as ECMS relies on predefined and approved optimized processes and workflows. The ECMS provides a self-service approach for case management and processing, which allows for the speedier treatment of cases. As previously mentioned in this section, the treatment time of cases correlates to judgment delivery delays and case backlogs. Combining an ECMS with an ECFS provides a set of essential services to the public that is necessary for real-time tracking. According to Vasista (2018), the integration of ECMS and e-filing systems within a unique e-justice or e-court management system provides value in two critical areas, which are (a) having a system that replaces

individual failing systems in courts and (b) having an automated system to replace massive manual court systems. Automating manual court processes reduces data input and retrieval time while sharing data across courts and partners.

### **Electronic Case Record Management System**

Electronic records management is a crucial element in the digitization of court processes procedure as it allows the court to generate, maintain, and operate based on the digitized records and information. Virtucio et al. (2017) argued that the failure to locate any court case documents during court proceedings results in the impossibility to proceed, which is responsible for case backlogs and delays in the delivery of justice due to lack of evidence in the form of records.

Maseh (2015) stated that during the launch of the Kenyan judiciary transformation framework in 2010 to counter accumulated case backlogs, case delays, productivity issues, and the frustration of the citizens, the Kenyan judiciary undertook to deploy an ECMS. The system included a document management module and audio recording tools to address the delays in searching and retrieving court archives and records.

Many kinds of literature support that digitization has changed how government

institutions operate, generate, and manage records. According to Satirah et al. (2013), the combination of an electronic case record management system with an ECMS allows better management of the whole lifecycle of physical and electronic documents or records for the following purposes:

support the creation, editing, and management of electronic documents;

improve the execution of processes and the organizational workflows; and

create and maintain the link between the appropriate contextual information and the existing records to support their operation as evidence.

### **Electronic Docketing and Scheduling System (Tracking)**

According to Satirah et al. (2013), the electronic docketing and scheduling system is part of the ECMS and aims to make all case files and dockets accessible from any allowed remote location by the judges, lawyers, jurors, and involved parties. Satirah et al. noted that ECMS allows lawyers to file a case from a remote location over the internet to create docket entries.

Aaltonen et al. (2015) stated that in the Finnish judicial system, it is possible to book 20 courtrooms using browser-based information systems that are accessible through the concerned court intranet on a centralized electronic

calendar. In 2011, the Finnish government envisioned a pretrial system that would entirely rely on an electronic system, in which an automated list would handle the prosecutor's task load management. Aaltonen et al. (2015) noted that the scheduling system for pretrial investigation allows non-complex cases in a click within an accelerated process, which offers the possibility to resolve cases in 1 to 3 days. Aaltonen et al. specified that, on the other hand, all the parties receive the docket and case scheduling-related information via electronic calendars and assistants' scheduling, offering an overlapping of suitable timeslots. During the court sessions of scheduled cases, the courtroom technology services and legal database information are available to the parties via a secured wireless network, allowing faster retrieval of information and making paper files obsolete.

### **Courtroom Technology**

The management of court processes through the traditional manual system involves the use of massive amounts of paper and hard copies of files. Court processes cut across the two main phases of judicial procedures, which are the written and oral phases. According to Donoghue (2017), as the oral phase occurs in courtrooms, the introduction of courtroom technology helped to improve the administration

and management of cases and the delivery of justice.

Singh et al. (2018) stated that the use of different types of technologies in courtrooms worldwide gradually allowed expediting court processes and also improved the delivery of justice. The digitization of court processes in courtrooms involves using technologies such as digital audio and video recording systems, electronic exhibit (e-exhibit) systems, 21 and video display systems.

Morison and Harkens (2019) stated that in the United Kingdom (UK), the evolution from alternative dispute resolution (ADR) into online

dispute resolution (ODR) revealed that technology mostly acts like a tool that assists in dispute resolution and not an autonomous system that can automatically process and settle disputes by itself.

According to Donoghue (2017), the successful use of pre-recorded videotaped trials in the UK triggered the integration of emerging technologies such as laptops, computers, video recorders, and many other IT hardware and software and promoted the rollout of pre-recorded cross-examination nationally.

Prescott (2017) stated that the United States (US) courtrooms

also implemented digital courtroom systems that involve using technologies such as video conferencing systems for remote testimonies, online form completion, triage services, mobile access, and online case resolution systems.

Despite the several merits associated with ECCMIS, the system has numerous challenges. African judiciaries have struggled and are still struggling with the system to make it better. The next section presents the challenges of digitising court processes in African regional, subregional and national courts.

## CHALLENGES OF DIGITIZING COURT PROCESSES IN AFRICAN REGIONAL, SUBREGIONAL AND NATIONAL COURTS

The digitization of processes in African regional, subregional and national courts involves several challenges, which include the following:

### Infrastructure Challenges

The issue of insufficient infrastructure to fulfill the requirements for providing electronic services (e-services) to the citizens located in developing countries also concerns the judiciary administration (Vasista, 2018). Countries such as the Republic of Kazakhstan opted for the maximum use of public service centers (PSC) to reduce the cost of acquiring IT infrastructure for digitizing processes and services. Raikhanova et al. (2017) stated that the acquisition of ICT

infrastructure for digitizing processes and services aims to provide public services to individuals and legal entities per city or region. The choice of the geographical location to deploy an e-justice system depends on the availability of the required infrastructure.

According to Sousa and Guimaraes (2017), a critical step in implementing an electronic court system is the availability of enough infrastructure to implement the system.

### Electric Power Supply

In several regions of the world, the power supply problem represents an essential obstacle to the smooth operation of computers and networks. In the Indian judiciary administration, the electric power supply problem remains a severe obstacle to the digitization of court processes and is responsible for case handling delays. Vasista (2018) stated that the Central Electricity Authority in India anticipated an energy deficit and peaking shortage of 10.3% and 12.95%, respectively, for

the years 2011 and 2012, with the power available for only 6 to 8 hours per day in several states.

Similarly, The African continent also has power supply problems. Pillot et al. (2019) stated that in 2014, the African continent counted an overall electrification rate of 42.5% with a 70% rate for urban electrification and 28.2% rate for rural electrification compared to developed countries where the respective rates mentioned above are all 100%. The power supply is a crucial requirement in the implementation of electronic systems for regional or subregional communities.

### **IT Literacy Challenges**

The effective digitization of court processes usually presents several challenges related to the rising level of corruption, low awareness of IT technologies and resources, lack of regulation implementation, and security problems (Shah & Gupta, 2017). Bosire et al. (2018) emphasized that the understanding and transfer of knowledge usually occurred through well-structured and targeted training. The training of judicial officers and staff to use IT tools deployed for digitized court processes is required to ensure quality and operational performance. Cassim (2017) noted that as the concept of electronic information (e-information) continues to grow, lawyers need to request, produce, and manage electronic documents for the advantage

of their clients over the opponents. Consequently, the deployment of e-justice services requires IT literacy from the system's internal and external users, including the judicial organization's staff and the lawyers representing the parties.

### **Organizational and Structural Challenges**

The digitization of court processes in African regional, subregional and national courts present several structural challenges. According to Maseh (2015), Eastern and Southern African courts still have multiple problems with capturing and preserving court records, which include the (a) lack of organizational plans for record management, (b) lack of knowledge in records and archive management, (c) insufficient awareness on the how the record management supports the organizational efficiency and accountability, (d) absence legislation, procedures, and policies to guide the management of records (e) inadequate security and confidentiality controls, and finally (f) the inexistence or record disposal policies and strategies for records migration.

### **Policy Challenges**

The lack of procedures for managing electronic records, which is a crucial component in the digitization of court processes, is a serious issue across the East African Region (International Records Management Trust, 2011). The design of processes

and procedures usually relies on existing policies, and the digitization of court processes requires an alignment between the electronic processes and the policies of the concerned judicial organization. According to Maseh (2015), this alignment requires the adoption, endorsement, and promulgation of the policy across the organization before the digitization process. Finally, the alignment with the current business needs requires regular review of policies for more quality and efficiency.

### **Standardization Challenges**

Digitization generally requires the standardization of processes before automation or workflow designs (Salkute, 2019). Each African regional, subregional and national court has its specificity in the mandate, organizational structure, court processes, rules of procedures, and community law (Fon, 2019). According to Fler (2018), digital information environments are not compatible with ambiguity and strongly require avoiding standardization bias. It is crucial to identify and establish organizational standards before processing the digitization of business processes.

### **Security Challenges**

A recent study related to the alignment of records management with ICT in

East African governmental institutions such as courts revealed the existence of policies to manage existing paper records and not digital records (Maseh, 2015). The security of data and information technology services in the e-justice system guarantees the confidentiality, authenticity, and validity of the information (Salkute, 2019). According to Sovova et al. (2017), digital documents require access control rules and policies throughout the lifecycle of the document to avoid breaches of privacy and ensure compliance with security standards such as the Health Insurance Portability and Accountability Act (HIPAA), General Data Protection Regulation (GDPR), and others.

### **Total Quality Management**

As the IT world continues

to evolve, IT engineering continues to focus on problem-solving with customer satisfaction in mind. Alhassan et al. (2017) stated that TQM is a conceptual framework that formalizes various organized steps for continuous development. According to Milakovich (1991), TQM is a total organizational approach that focuses on customer needs and expectations based on the involvement of everyone, including managers and employees, to improve organizational processes, products, and services. Laszlo (1997) stated that TQM uses an approach that focuses on customer satisfaction by involving everyone in the organization and continuous improvement. Additionally, Black and Revere (2006) indicated that TQM aims to improve processes, outcomes, or services to impact the satisfaction of the customer. The digitization of

courts of processes helped in improving access to courts, expediting courts procedures, and reducing case backlogs in countries such as the US, India, Kenya, and Malaysia (Greenwood & Brinkema, 2015; Krishna, 2018; Maseh, 2015; Satirah et al., 2013) and requires the involvement of all the major stakeholders to achieve quality.

The Bar in Uganda has faced almost all the above challenges since the inception of ECCMIS in Uganda. These challenges continue to date and need urgent attention if administration of justice is to be realised. The next section summarises the challenges of ECCMIS to the Ugandan Bar.

*ECCMIS was operationalised by Uganda's judiciary on 01 March 2022.*

## **ECCMIS AND THE UGANDAN BAR**

ECCMIS was operationalised by Uganda's judiciary on 01 March 2022. It is barely less than a year old. Whereas judicial officers in Uganda underwent numerous trainings before the launch of the ECCMIS in Uganda, practicing advocates did not get this opportunity. Most of the trainings availed to practicing advocates were after the implementation of the system amidst several protests and complaints from members of the bar.

Some law firms in Uganda barely embrace technology. They have for decades handled their legal practice without embracing technological advancements. In Uganda, there are still several law firms without a single computer and typing their work from secretarial bureaus in the main city of Kampala and its suburbs (City Square building, Nasser Road secretarial bureaus, Wandegaya street, Makerere and Nakulabye areas).

There was barely little time given to the practicing advocates to prepare for ECCMIS which with no doubt calls for structural, infrastructural (human resource and machinery) and attitude change. These among other factors contribute to the challenges faced by the Ugandan Bar with the inception of ECCMIS.

## **Challenges of ECCMIS to the Ugandan Bar**

### **Internet connectivity challenges**

Internet in Uganda is still very unreliable as it is unstable. It is always on and off which interrupts the ongoing court proceedings specifically payment of court fees as a result of failed network, uploading documents on the system as a step-in e-filing and on the part of the court validating documents filed electronically. This delays the filing process and defeats the purpose of e-filing which is reduction of time frame in filing process. It is important to note that ECCMIS hasn't proven faster in filing process compared to the former manual filing. Advocates were assuring of filing within a day after their documents are ready. Under ECCMIS this can never be guaranteed as it is dependent on availability of internet which is beyond the control of the managers of the system.

### **Inadequate and poor technological infrastructure**

Most law firms in Uganda cannot afford access to modern and faster gadgets. This is simply because the cost involved in access to such facilities is high. Whereas the judiciary is funded by government and other donors and can easily access modern and faster machinery to boast its ICT functions, private law firms in Uganda may not afford them. Consequently,

the system needed to be gradually implemented allowing reasonable time to law firms to revisit their ICT strategy and budget for such machinery. This was never considered thus numerous challenges with the system.

### **Inadequate human resource with ICT skills**

This is yet another problem affecting e-justice and e-judiciary in Uganda. The judiciary initiated ECCMIS kiosks in some pilot courts to assist advocates in learning how to effectively use the system. ICT is a practical skill which requires experts to run the system. There is also a technical committee steering ECCMIS in Uganda's judiciary some of whose members are of ICT background. These have been overwhelmed as they are very few compared to a number of court users even in the ECCMIS pilot courts and cannot handle the volume of ICT related challenges presented to them by the members of the Bar and their staff. Consequently, there is serious delays in handling the ICT related complaints of the Bar resulting into delayed services and poor access to justice.

Lack of ICT skills is challenging the effectiveness of e-judiciary and e-justice. Most of the key stakeholders, especially, judicial officers, practicing advocates and other clerical court staff, specifically, the court clerks lack basic ICT knowledge. This makes the whole process problematic and frustrating

as they are key in both filing process and hearing of cases. Relying on the technical staff all the time makes the entire system slow and unreliable.

### **Delayed validation of documents**

Once documents have been effectively uploaded on the system, the file is given a draft number. This number is for purposes of tracking the process of filing but not the exact case number for purposes of filing. The final number (which serves as the case number for filing purpose) is given after the documents have been validated. Powers to validate documents are only assigned to specific judicial officers. In this period of six months of operation of ECCMIS, the Bar has experienced challenges and raised several complaints to all the pilot courts on the delay of validation of documents. Summons can take about three weeks before issue. An interlocutory application for an interim order which by its nature is too urgent can take two-three weeks before the motion is issued or signed. This delayed validation is totally undermining the efficiency of ECCMIS yet under the manual system such summons could be fixed and signed in a single day. The question for a legal practitioner is whether or not ECCMIS is proving to be more inefficient than the manual phased out system.

### **The system is not paperless as it purports**

Filing of documents is by way of scanning and uploading them on the system. In other jurisdictions like Malawi, you do not need to do all this work. After preparing your pleadings in soft copy, you upload them on the system. You only scan the documents you intend to accompany the pleadings which are not readily available in soft copy.

Similarly, after the documents have been uploaded and validated, then they are either printed for purposes of service on the opposite party or you present hard copies for purposes of signing by the in charge judicial officer and thereafter serve the hard copy. This in itself creates too much work and becomes expensive to lawyers. The question for a legal practitioner is whether we have dealt away with manual filing or it is advanced manual filing disguised as ECCMIS.

### **Most unrepresented litigants seem left out in the ECCMIS interventions**

The rolling out of ECCMIS by the judiciary introduced online filing. This has been ongoing since its inception yet many unrepresented litigants are lacking ICT skills to manage the system and majority cannot afford services of lawyers given the cost of legal services in Uganda. This means that litigants who cannot afford services of attorneys or private lawyers have to file their cases electronically

and majority of them lack ICT skills and cannot even afford accessing a computer and using available commercial services like internet cafes or kiosks, has negative implications on the privacy and security of their information. The Probono service providers in Uganda are not so many and there is no guarantee that they have the necessary technology and human resource infrastructure to manage e-chambers and e-filing. Indeed, most of the Probono service providers in Uganda rely on donor funding which is unpredictable and may take time to fund some of the projects even when there is urgent need. This in the end creates a divide in the dispensation of justice especially to the poor and vulnerable persons who may be left out of this e-court and e-judiciary. This has an effect on access to justice as it even violates their rights under the Constitution. The Constitution, for example, provides under Article 126 (1) that:

Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people.

The Constitution further provides under Article 126 (2) that:

In adjudicating of cases of both civil and criminal nature, the courts shall, subject to the law, apply the

following principles;

- (a) justice shall be done to all irrespective their social or economic status;
- (b) justice shall not be delayed;
- (c) .....
- (d) .....
- (e) Substantive justice shall be administered without undue regard to technicalities.

The judiciary has assured the public that it will help such litigants to do the filing but given the limited human and ICT infrastructure in the judiciary itself, there is no guarantee that this will ever be achieved.

### **Negative attitude to change or wrong perception**

Embracing ICT in the adjudication process is yet another problem. A number of judicial officers and practicing advocates have negative attitude to some e-judiciary and e-justice interventions. An example is the ECCMIS which despite several attempts to train and make it user friendly has been rejected by some advocates and judicial officers and still feel comfortable in proceeding with the manual system. Most of these stakeholders have an attitude of persons born before computers (BBC) and would hardly embrace change.

### **Inadequate legislative framework to facilitate e-justice in Uganda**

The other serious challenge is the law governing e-justice

specifically online filing, issue and service of summons in both civil and criminal matters and conducting electronic proceedings. Currently, the laws on ICT adjudication that facilitate e-justice in Uganda include; The Constitution (Integration of ICT into the adjudication processes for courts of judicature) (Practice) Directions, 2019; the Judicature (Visual-Audio Link) Rules, 2016; Guidelines for Court Online Hearings, Office Instruction No. 2 of 2020; Electronic Transactions Act, 2011, The Electronic Signatures Act, 2011, The Computer Misuse Act, 2011 and the Data Protection and Privacy Act, 2019. Most of these laws do not guide on the procedure to be followed while commencing a civil or criminal matter; issue and service of summons; taking out and service of hearing notices or criminal summons and conducting locus in quo proceedings. ECCMIS has provided most of these processes in its functions. The concern is under what law is ECCMIS providing these processes? The laws on physical or manual filing specifically the Civil Procedure Rules, are still in force unfortunately, with the rolling out of ECCMIS, manual filing was mandatorily phased out in selected courts

already mentioned herein and this phasing out will move gradually to all courts.

Lack of rules surrounding the use of electronic records was an additional weakness encountered in the transition from paper-based systems to automated systems in Lesotho. A lawyer's unanswered question is what law is in force facilitating issue of summons electronically? Some lawyers have threatened to sue the Attorney General of Uganda contending that some functions of ECCMIS are not backed by any law and are in contravention of existing law.

### **The cost of e-justice in Uganda**

The cost of e-justice is yet another serious challenge. Access to internet services, data and computer infrastructure is costly in Uganda. When ECCMIS was rolled out, many practicing advocates were caught unaware and taken by surprise as they had not yet equipped themselves with the necessary technology and human resource infrastructure to enable them migrate from the paper docket or manual e-chamber to a digital chamber and properly

embrace e-justice. This has left majority struggling and others are still praying to the different court administrators to continue filing their papers manually a fact that is affecting the planned roll out of e-justice at the same time inconveniencing practicing lawyers and limiting them to represent interests of their clients ably.

From the above, it can be observed that ECCMIS is still faced with multiple challenges. Most of these challenges need time to be addressed and others can be addressed in the short run as the system operates. That said, it cannot be ruled out that ECCMIS despite multiple challenges, cannot be completely avoided given the trend taken by the global, regional and sub-regional judiciaries. If we reflect on the Covid-19 situation in the country and world over, every practicing advocate would want the system implying that it is relevant. We only need to fix its challenges and make it better. The next section presents the summary of some of the relevant recommendations but the list is not exhaustive.

## **RECOMMENDATIONS**

- Sound policy that governs the use of the system should be formulated and put in place so as to guide user on how best the system is used.
- The registry clerks and other court officers who use the system every day are well trained on how to use computers (computer literacy).
- There is need to have a good internet connection since for the system to work perfectly it depends on the internet.
- There is need to increase the number of ICT staff so that there is smooth and efficient work done due to shared responsibility.
- The Government of Uganda (GoU) should allocate more funds to the judiciary to build

more capacity and install more ICT equipments in all courts. More funds should be channeled to the purchase of audio and visual conferencing facilities.

- There is need to give the system operating it alongside the manual system as it develops. It was a wrong idea to completely phase out the manual system before testing the efficiency of ECCMIS in Uganda's judiciary.
- The Judiciary of Uganda should go back to the drawing board and carry out relevant and inclusive stakeholder consultation of the effectiveness of the system for better improvement.
- The GoU should subsidise the cost of internet data.
- The judiciary should hire ICT experts to deal with technical and system related challenges in e-justice electronic infrastructure.
- The Judiciary should spearhead the training of key stakeholders; the judiciary, court administrative staff, court clerks, practicing advocates and litigants in the ICT basic skills.
- The Rules Committee should come up with relevant rules to facilitate the smooth operation of e-justice canvassing the procedural steps involved in the system and harmonizing them with the existing law on filing and issue of court documents especially, the Civil Procedure Rules.

## CONCLUSIONS

The digitization of court processes requires developing ICT infrastructure and the ability to operate digital hardware and software (International Telecommunication Union, 2017; World Bank Group, 2016). Digitizing court processes in African regional, subregional and national courts offer several benefits, which include the provision of the appropriate ICT infrastructure, ICT literacy, the potential for a drastic reduction of case backlogs, and resolve access to justice issues. At any phase of the judicial procedure (written or oral), technology-based tools and workflows related to e-filing, case management, electronic records management, electric docketing, and scheduling systems, and courtroom technology can work as an overall system to provide real-time reliable and efficient solutions for the speedy delivery of justice to our judiciary.

Identifying the best practices and strategies for successfully digitizing court processes based on TQM, requires a deep understanding of the processes by involving everyone and keeping the stakeholders' satisfaction at the centre of the system. The implementation of quality principles allows improving the organization's effectiveness and helps in the journey of achieving its mission and objectives (Raja Sreedharan et al., 2017).

The contributions of e-justice cannot be over emphasized. Evidently, digitisation of the court system enables courts to operate during restrictions as those occasioned by the Covid-19. While access to justice is concerned with procedural fairness, the adoption of ICT in the justice system broadly supported the right in terms of the speed of disposal of disputes and the right to be heard among others.

Despite the above, technology has its inherent limitations, some aspects of the rights to a fair hearing cannot be guaranteed by the ICT system. Evidently, confidential communication between client and attorney has not been guaranteed. Inherently also, the inbuilt weaknesses such as signal issues, cost of data, lack of familiarity with technology tends to hinder the good cause of the e-justice system in some cases conversely leading to violation to the right to a fair hearing by cause unnecessary delays occasioned by system failure thus making lawyers' work very complex.